Canadian Human Rights Tribunal

Tribunal canadien des droits de la personne

Citation: 2019 CHRT 18
Date: April 25, 2019
File Number: T2230/5217

Between:

Laurent Duverger

Complainant

- **and** -

Canadian Human Rights Commission

Commission

- **and** -

2553-4330 Québec Inc. (Aéropro)

Respondent

Decision

Member: Gabriel Gaudreault

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I. Background to the Complaint

[1] This is a complaint filed by Laurent Duverger (the Complainant) against 2553-4330 Québec Inc. (the Respondent or Aéropro) under paragraph 14(1)(c) of the *Canadian Human Rights Act* (*CHRA*). Mr. Duverger was a weather observer at the station in Chibougamau, Quebec, between October 2007 and June 2010. He alleges that he was harassed by his supervisor, Mr. Raymond Dallaire, on the ground of his disability or his national or ethnic origin.

[2] On November 28, 2013, he filed a complaint with the Canadian Human Rights Commission (the Commission). Several legal proceedings followed the filing of this complaint, including some judicial reviews, which will be explained later in this decision.

[3] It is important to note that on September 12, 2017, the Commission referred the complaint to the Tribunal for inquiry, based on allegations of discrimination under sections 7 and 14 of the *CHRA*. On September 25, 2017, the Tribunal received a second letter from the Commission, informing it that an administrative error had been made in the initial reference and explaining that the complaint to be dealt with by the Tribunal only concerned the harassment allegations under section 14 of the *CHRA* and not those under section 7 of the *CHRA*. The Tribunal shall therefore analyze this complaint under section 14 of the *CHRA*.

[4] The Tribunal held hearings via videoconference in Ottawa and Québec from October 2 to 4, 2018. The Tribunal did not hesitate to be proactive in managing the hearing, partly because of the use of videoconferencing, and the parties were able to report any technical problems arising from the use of videoconferencing.

[5] For the reasons set out below, the Tribunal grants Mr. Duverger's complaint, in part.

II. Issues

[6] The issues to be determined by the Tribunal are the following:

(1) Did the Complainant meet the burden of proof for his case regarding the harassment in matters related to employment (paragraph 14(1)(c) of the *CHRA*)?

a. Is there a prohibited ground of discrimination under the *CHRA*?

b. Did the harassment have an adverse impact?

c. Is there a link between the protected prohibited ground of discrimination and the adverse impact, i.e., was the protected ground a factor in the adverse impact?

(2) If the Complainant meets the burden of proof for his case, was the Respondent able to present a defence or limit its liability under section 65(2) of the *CHRA?*

(3) If not, what remedies should the Tribunal order?

III. Chronology of the case

[7] First, the Tribunal is of the view that it is important to review the chronology of the various cases opposing Mr. Duverger and his former employer, Aéropro.

[8] It is unfortunate that the parties did not specifically help the Tribunal make connections between the various legal proceedings in which they were involved as adversarial parties, even though, at the hearing and when they submitted their evidence, it was clear that the parties had a lengthy judicial history. However, the Tribunal cannot disregard this chronology because it will be discussed later in this decision. The decisions rendered by certain judges and the arbitration award rendered by a referee will have a significant impact on the case.

[9] That said, the Tribunal benefitted from the filing of several decisions and an arbitration award, which helped to clarify this history. More specifically, Mr. Duverger filed the following decisions:

- *L.D. et Aéropro*, 2013 QCCLP 1871, rendered on March 20, 2013, by Pierre Sincennes, administrative judge at the Commission des lésions professionnelles (hereinafter referred to as the CLP);

- *L.D. et Aéropro*, 2013 QCCLP 3939, rendered on June 27, 2013, by Marie Langlois, administrative judge at the CLP;

- *2553-4330 Québec Inc. v. Duverger*, 2017 FC 128, rendered on February 2, 2017, by the Honourable Madam Justice Martine St-Louis;

- *2553-4330 Québec Inc. v. Duverger*, 2018 FC 377, rendered on April 9, 2018, by the Honourable Mr. Justice Luc Martineau.

[10] In turn, the Respondent filed the following decisions:

- *2553-4330 Québec Inc. c. Laurent Duverger*, EYB 2015-255245, arbitration award rendered on February 18, 2015, by referee Léonce-E. Roy;

- *Laurent Duverger v. 2553-4330 Québec Inc.*, 2015 FC 1131, rendered on October 2, 2015, by the Honourable Justice Michel Beaudry;

- *Laurent Duverger v. 2553-4330 Québec Inc.*, 2016 FCA 243, rendered on October 3, 2016, by the Honourable Justices Johanne Trudel, Richard Boivin and Yves de Montigny.

[11] After a careful reading of these decisions, the Tribunal was able to gain insight into the sizeable judicial history between the parties, which can be divided into four categories. Without claiming to cover this entire history and all the details of the proceedings, the following overview suffices:

- Mr. Duverger started working at Aéropro in May 2008.

- Mr. Duverger resigned on June 21, 2010.

Commission de la santé et de la sécurité au Travail and the Commission des lésions professionnelles

- On March 8, 2012, Mr. Duverger filed a claim with the Commission de la santé et de la sécurité du travail (CSST) for an occupational injury sustained while employed by the Respondent.

- On May 15, 2012, the CSST denied his claim because it was considered to be prescribed.

- Mr. Duverger requested an administrative review of this decision, which was upheld by the CSST on June 21, 2012. He requested a review of this decision by the CLP.

- On March 20, 2013, the CLP reversed the decision rendered by the CSST (see *L.D. et Aéropro*, 2013 QCCLP 1871, rendered on March 20, 2013, by Pierre Sincennes).

- On June 27, 2013, the CLP rendered a new decision and determined that Mr. Duverger had sustained an occupational injury (see *L.D. et Aéropro*, 2013 QCCLP 3939, rendered on June 27, 2013, by Marie Langlois).

***Canada Labour Code*, Labour Program and Arbitration**

- On August 6, 2013, Mr. Duverger filed a complaint under the *Canada Labour Code* (hereinafter referred to as the CLC) to claim a standard wage top-up, additional overtime hours, annual vacation pay and compensation for pain and suffering.

- This complaint was received on August 15, 2013, by Human Resources and Skills Development Canada (hereinafter referred to as HRSDC).

- On July 3, 2014, Ms. Johanne Blanchette, a Labour Program inspector, responded to Mr. Duverger's claim under the CLC and issued a payment order requiring Aéropro to remit the amount of $6,730.64 to the Receiver General for Canada, on behalf of Mr. Duverger.

- On July 18, 2014, Aéropro appealed the decision rendered by Ms. Blanchette of the Labour Program, primarily on the ground that the claim was filed outside of the limitation period.

- On February 18, 2015, referee Léonce-E. Roy allowed the appeal filed by Aéropro of the payment order issued by inspector Ms. Blanchette and ruled that Mr. Duverger's right of action was prescribed and that Mr. Duverger had not been unable to act before August 6, 2013, the date on which his complaint under the CLC was filed (see *2553-4330 Québec Inc. c. Laurent Duverger*, EYB 2015-255245, arbitration award rendered on February 18, 2015, by referee Léonce-E. Roy). Mr. Duverger filed an application for judicial review of this decision with the Federal Court.

- On October 2, 2015, the Honourable Justice Beaudry of the Federal Court dismissed Mr. Duverger's application for judicial review of referee Léonce-E. Roy's arbitration award; Mr. Duverger appealed the Federal Court's decision before the Federal Court of Appeal.

- On October 3, 2016, the Federal Court of Appeal dismissed Mr. Duverger's appeal from the decision rendered by the Honourable Justice Beaudry (see *Laurent Duverger v. 2553-4330 Québec Inc.*, 2016 FCA 243). Consequently, the arbitration award rendered by referee Léonce-E. Roy was upheld.

Canadian Human Rights Commission and Tribunal

- On August 23 and 26, 2013, Mr. Duverger filed two complaints against Aéropro with the Commission, pursuant to sections 7 and 14 of the *CHRA*.

- On November 28, 2013, the Commission consolidated the complaints filed on August 23 and 26, 2013.

- On October 29, 2014, the Commission decided not to deal with the complaint filed by Mr. Duverger, finding that it was vexatious within the meaning of

paragraph 41(1)(d) of the *CHRA*. Mr. Duverger filed an application for judicial review of this decision with the Federal Court.

- On September 11, 2015, the Federal Court allowed Mr. Duverger's application for judicial review of the Commission's decision to not deal with his complaint because it was vexatious. The complaint was referred back to the Commission for a two-tiered inquiry dealing with the wage disparity and the post-employment harassment.

    - The Tribunal notes that neither of the parties filed this decision; they instead filed the decision rendered by the Honourable Madam Justice St-Louis, *2553-4330 Québec Inc. v. Duverger*, 2017 FC 128, which discusses the decision rendered by the Honourable Mr. Justice Yvan Roy (*Duverger v. 2553-4330 Québec Inc. (Aéropro)*, 2015 FC 1071) at paragraph 11.

- On March 30, 2016, the Commission, after addressing the preliminary objections raised by Aéropro, decided that it would deal with Mr. Duverger's consolidated complaint. Aéropro challenged this decision before the Federal Court.

- On February 2, 2017, the Federal Court dismissed Aéropro's application for judicial review of the Commission's decision to deal with Mr. Duverger's consolidated complaint (see *2553-4330 Québec Inc. v. Duverger*, 2017 FC 128).

- On June 9, 2017, Mr. Philippe Harpin, a Commission investigator, finalized his investigation report.

- On August 30, 2017, the Commission finally dealt with Mr. Duverger's consolidated complaint and referred part of the complaint, concerning the fact that the defendant (Aéropro) did not take appropriate measures to address acts of harassment or prevent their recurrence, to the Tribunal. The Commission also found that the alleged adverse treatment was not related to one of the prohibited grounds of discrimination raised in the complaint. Aéropro challenged this decision before the Federal Court.

- On September 12, 2017, the Commission sent a first letter to the Tribunal, referring it the complaint.

- On September 25, 2017, the Commission sent a second letter because an administrative error had been made in the letter dated September 12. In this letter the Commission clarified that the inquiry should focus only on the allegations under section 14 of the *CHRA*.

- On February 6, 2018, the Tribunal dismissed an application for a stay of proceedings filed by Aéropro (*Laurent Duverger v. 2553-4330 Québec Inc. (Aéropro)*, 2018 CHRT 5).

- On April 9, 2018, the Federal Court dismissed Aéropro's application for judicial review of the Commission's decision to refer the portion of the complaint concerning post-employment harassment to the Tribunal (see *2553-4330 Québec Inc. v. Duverger*, 2018 FC 377).

Commission des droits de la personne et de la jeunesse and Quebec Human Rights Tribunal

- The parties also briefly informed the Tribunal that other proceedings were under way before the Quebec Commission des droits de la personne et de la jeunesse and before the Human Rights Tribunal, including against Mr. Dallaire personally.

    - Note that Mr. Dallaire is not personally named as a party to the proceedings before the Tribunal; only Aéropro is named as the Respondent.

IV. Applicable law

[12] It cannot be said enough: the purpose of the *CHRA* is to guarantee that all individuals have an opportunity equal with other individuals to make for themselves the lives that they are able and wish to have and to have their needs accommodated, consistent with their duties and obligations as members of society, without being hindered in or prevented from doing so by discriminatory practices based on any of the prohibited grounds of discrimination under the *CHRA* (see section 2 *CHRA*).

[13] In the context of an inquiry into a human rights complaint, the burden of proof rests with the Complainant. This is what the tribunals and courts of justice traditionally refer to as a *prima facie* case of discrimination, a Latin expression I tend to avoid because I do not believe that it is helpful and may even give rise to misunderstandings concerning the applicable law in matters related to discrimination (see similar comments in *Simon v. Abegweit First Nation*, 2018 CHRT 31, at para. 51. See also *Emmet v. Canada Revenue Agency*, 2018 CHRT 23, at paras. 53 and 54 as well as *Vik v. Finamore (No. 2)*, 2018 BCHRT 9).

[14] This does not change the applicable analysis in this case, which has been performed countless times. The Complainant's burden is to make a case "[...] which covers the allegations made and which, if they are believed, is complete and sufficient to justify a verdict in the complainant's favour in the absence of an answer from the respondent-employer" (*Ontario Human Rights Commission v. Simpsons-Sears*, [1985] 2 SCR 536, at para. 28).

[15] The three-step analysis for matters related to discrimination was established by the Supreme Court of Canada in *Moore v. British Columbia (Education)*, [2012] SCR 61 [*Moore*], at para. 33. According to this analysis, in matters concerning harassment, the Complainant must demonstrate :

(1) that he has a prohibited ground protected from discrimination under the *CHRA* (in this case, disability or national or ethnic origin);

(2) that he experienced an adverse impact; and

(3) that the prohibited ground of discrimination (disability or national or ethnic origin) was a factor in the harassment in matters related to employment.

[16] The evidence presented to the Tribunal must be analyzed on a balance of probabilities and it is not necessary to demonstrate that the prohibited ground was the sole factor in the adverse impact experienced by the complainant (*Quebec (Commission des droits de la personne et des droits de la jeunesse) v. Bombardier Inc. (Bombardier Aerospace Training Center)*, [2015] SCR 789) [*Bombardier*].

[17] Direct proof of discrimination is not necessarily required, nor is it mandatory to demonstrate an intention to discriminate (see *Bombardier*, at paras. 40 and 41). Discrimination is generally neither open nor intentional, and the Tribunal must consider all the circumstances that gave rise to the complaint in order to determine whether there is a subtle scent of discrimination. The Tribunal can therefore draw inferences from circumstantial evidence when the evidence presented in support of allegations make such an inference more probable than other possible inferences or hypotheses (see *Basi v. Canadian National Railway Company*, 1988 CanLII 108 (CHRT)). That said, the circumstantial evidence must be tangibly related to the Respondent's impugned decision or conduct (see *Bombardier*, at para. 88).

[18] I believe that when the Tribunal must decide whether a complainant has discharged his or her burden, it must analyze the evidence in its entirety, including the evidence filed by the respondent. The Tribunal may determine that the complainant failed to meet the burden of proof for his or her case if the evidence presented is not complete or sufficient or if the respondent was able to present certain evidence that, for example, refutes the complainant's allegations.

[19] Conversely, if a complainant is able to meet the burden of proof for his or her case, the respondent may avail itself of a defence provided in the *CHRA*, when possible, or limit liability, where applicable, under subsection 65(2) of the *CHRA*. In this case, the Respondent relied on this provision.

[20] Section 65 of the *CHRA* provides for the presumption that any act or omission committed by an officer, a director, an employee or an agent of any person, association or organization in the course of the employment of the officer, director, employee or agent shall be deemed to be an act or omission committed by that person, association or organization. An act or omission shall not be deemed to be an act or omission committed by a person, association or organization if it is established that the person, association or organization did not consent to the commission of the act or omission and exercised all due diligence to prevent the act or omission from being committed and, subsequently, to mitigate or avoid the effect thereof (subsection 65(2) *CHRA*).

[21] Later in the decision we will see that the Respondent argues that post-employment harassment is not covered by paragraph 14(1)(c) of the *CHRA*. With respect to the interpretation of the scope of this paragraph, it is my opinion that this is a question of mixed fact and law (this is also the opinion of the Honourable Mr. Justice Martineau, *2553-4330 Québec Inc. v. Duverger*, 2018 FC 377, at para. 47). That said, the Tribunal cannot delve into the interpretation of this provision without first making its own findings of fact. Consequently, the Tribunal will analyze the facts of this case and, in light of these facts, it will be able to interpret the scope of paragraph 14(1)(c) of the *CHRA*.

V. Preliminary remarks – scope of the Complaint

[22] Before analyzing the complaint, it is first necessary to clarify the scope thereof, since this will have an impact on the remainder of the decision.

[23] As mentioned briefly in the background to this decision, on November 28, 2013, Mr. Duverger filed a complaint with the Commission under sections 7 and 14 of the *CHRA*.

[24] The progression of the case between Mr. Duverger and Aéropro was marked by several legal proceedings, including before the Commission des lésions professionnelles, the Federal Court and even the Federal Court of Appeal. The Complainant also pursued certain remedies under the *Canada Labour Code*, in addition to the proceedings instituted under the *CHRA*. The complaint before the Tribunal is therefore just a tiny part of the primarily legal proceedings that have taken place between the parties.

[25] The complaint was referred to the Tribunal for inquiry on September 12, 2017, following an investigation by Mr. Harpin, Commission investigator. This referral from the Commission did not specify the discriminatory practices that the Tribunal should focus on in its inquiry into the complaint.

[26] On September 25, 2017, the Tribunal received a second letter from the Commission informing it that an administrative error had been made in its previous letter. This time, the Commission clarified that the complaint referred to the Tribunal concerned section 14 of the *CHRA* only and that it was not requesting an inquiry into the complaint under section 7 of the *CHRA*.

[27] The complaint under section 7 of the *CHRA* concerned adverse differential treatment that Mr. Duverger allegedly suffered in the course of his employment and more specifically, allegations of wage disparities. These wage disparities included a denied wage increase, unpaid overtime hours and unauthorized deductions from the Complainant's wages. The complaint under section 14 of the *CHRA* concerned acts of post-employment harassment against the Complainant regarding which the Respondent allegedly failed to take appropriate measures to correct the situation or prevent the acts from recurring.

[28] The Tribunal benefited from the Commission's decision dated August 30, 2017. It also benefited from the investigation report completed on June 9, 2017, since all these documents were filed at the hearing. Mr. Harpin's investigation report was produced after the Federal Court's decision to refer the case back to the Commission because the CLP had not dealt with the issues of compensation and various wage conditions (discriminatory treatment) or the post-employment harassment. It was the Honourable Justice Roy, in his decision dated September 11, 2015 (*Duverger v. 2553-4330 Québec Inc. (Aéropro)*, 2015 FC 1071), who referred the case back to the Commission so that it could inquire into these two aspects. In paragraphs 59 to 61, he wrote as follows:

> [59] The Canadian Human Rights Commission refused to take up the two-tiered complaint submitted by the applicant. Whereas the applicant was complaining of wage disparity prohibited under the Act and post-employment discriminatory harassment by his ex-employer, the Commission found that a decision rendered by the Commission sur les lésions professionnelles du Québec contained basically the same allegations as in the complaint. This was not the case.
>
> [60] With regard to post-employment harassment, the CLP decision only deals with actions at the end of employment; it did not settle the post-employment harassment issue in any way. Wage discrimination was not the subject of the decision cited by the Commission for refusing to take up the complaint. In fact, in July 2014, the CLP stated that it was incapable of rendering a decision on this type of allegation.
>
> [61] It follows that the Commission's decision of October 29, 2014, must be set aside and that the review of the applicant's two-tiered complaint must be returned to the Commission. . . .

[29] Mr. Harpin’s investigation focused specifically on these two aspects.

[30] On page 2 of the investigation report, paragraph 2 of the section entitled *La Plainte* [the complaint], it is noted that the investigation covered two specific aspects: allegations of wage disparities that allegedly occurred in Chibougamau from May 2008 to June 21, 2010, and the harassment that allegedly occurred almost two years after the Complainant’s resignation, from April 2012 to July 2012.

[31] Further on in the report, page 3, paragraph 19, the investigator states that he investigated three specific allegations: (1) a denied wage increase; (2) unpaid overtime hours and unauthorized payroll deductions; and (3) the harassment by Mr. Dallaire after the Complainant's employment had ended.

[32] Also in the investigator’s report, in the section entitled *Enquête* [investigation], page 5, paragraphs 24 and following, the investigator placed the denied wage increase and unpaid overtime hours and unauthorized payroll deductions in the same category. These two allegations were dealt with under the heading *A. Distinction défavorable en matière d’emploi* [adverse differentiation in matters related to employment]). The harassment allegations, for their part, are discussed in a different section, under the heading *B. Harcèlement post-emploi allégué* [alleged post-employment harassment].

[33] In the section entitled *Sommaire* [summary], page 12, paragraphs 92 to 94, the investigator states that the evidence concerning the unpaid overtime hours and the unauthorized payroll deductions did not warrant review because it was not linked to a prohibited ground. With respect to the allegations of harassment during the period after Mr. Duverger’s employment had ended, the evidence obtained by the investigator justified a review of those allegations.

[34] Finally, the investigator’s recommendations, page 13, paragraph 100, are in line with what has already been said; the investigator recommended that the Commission refer the complaint to the Tribunal for inquiry, but only into a very specific part of the complaint, namely, the portion of the complaint concerning the acts of post-employment harassment.

[35] All in all, based on the Federal Court decision rendered by the Honourable Mr. Justice Roy on September 11, 2015, and the Commission's investigation report and decisions referring the complaint to the Tribunal for inquiry, it is clear that the Tribunal should only deal with the post-employment harassment allegations. The allegations concerning compensation and other wage conditions do not fall within the scope of the complaint before the Tribunal.

VI. Analysis of the Complaint

[36] The evidence shows that Aéropro is a company that operates in the aviation sector. It carries out various airport-related activities, including aircraft maintenance, airport management and management of meteorological and aerological stations.

[37] The Complainant is of French origin and has been living in Quebec for several years. The evidence shows that he started working in Chibougamau, more specifically at Chibougamau Airport, as a meteorological observer.

[38] It is the Tribunal's understanding that this airport was initially operated by another contractor, a company called ATS. In 2008, Aéropro submitted a bid to Environment Canada for management of the Chibougamau Airport, a contract it was awarded in May 2008.

[39] That said, Mr. Duverger started working for ATS in 2007. In order to ensure continuity of service, Aéropro retained the existing staff, including the Complainant, when it began operating the airport in May 2008.

[40] Mr. Duverger testified that during his employment with Aéropro, he was subjected to hostile, degrading and even threatening treatment by his supervisor, Mr. Dallaire, and his colleagues. Mr. Duverger testified, for example, that Mr. Dallaire threatened him in October 2009 by placing his fist close to his face and then, in January 2010, made a throat-slashing gesture, which he had perceived as a death threat.

[41] He also testified about certain humiliating events that occurred in the workplace, including degrading comments made by his work colleagues in relation to his French

origins. He also explained that Mr. Dallaire had blackmailed him when he had requested a letter that he needed for his immigration application.

[42] He also testified about the transportation problems he had faced in getting to Chibougamau Airport, which is located several kilometres from the city. Mr. Dallaire offered transportation to another employee, of African origin, but did not do the same for Mr. Duverger. Mr. Duverger also had to sleep in the shed (to use the term employed by the Complainant) at the weather station, which is the property of Environment Canada. It is the Tribunal's understanding that the use of this shed for living purposes was not approved by Environment Canada, which forced Mr. Duverger to sleep in the weather station, which is owned by Environment Canada, instead. At the time, Mr. Dallaire had taken Mr. Duverger's personal belongings from the shed and spread them out on the floor of the station, which Mr. Duverger had found humiliating and inappropriate.

[43] All these events occurred while Mr. Duverger was employed by Aéropro. The Tribunal does not intend to list everything that happened during that period. It is important to note that the Tribunal is not required to make findings of fact concerning any harassment that might have occurred during Mr. Duverger's employment. Instead, the aim is to put the complaint and the events that occurred after Mr. Duverger's employment into context.

[44] As mentioned earlier, it is clear that the harassment allegations in Mr. Duverger's complaint concern only the allegations that were made after his resignation (post-employment harassment).This emerges from the investigation and the Commission's decision, which is also consistent with the decision rendered by the Federal Court in *Duverger v. 2553-4330 Québec Inc. (Aéropro*), 2015 FC 1071, in which the Honourable Mr. Justice Yvan Roy reversed the Commission's decision not to deal with Mr. Duverger's complaint and ordered the Commission to conduct a two-tiered review of the complaint.

[45] In addition, Marie Langlois, the administrative judge of the CLP, has already conducted an analysis of several events that occurred while Mr. Duverger was employed by Aéropro. The Tribunal refers to the decision in *L.D. et Aéropro*, 2013 QCCLP 3939, dated June 27, 2013.

[46] It is true that the objective of the CLP was not to determine whether Mr. Duverger had been discriminated against and more specifically, harassed during his employment with Aéropro. The CLP's mandate was to determine whether he had sustained an occupational injury. This is in fact what it did, by making findings of facts concerning the threatening, hostile and degrading behaviour to which Mr. Duverger was subjected at the hands of his supervisor and other work colleagues.

[47] On this subject, the CLP wrote the following, in paragraphs 58 to 61:

> [TRANSLATION]
>
> [58] I noted that a number of threatening, hostile and degrading actions that even endangered the health and safety of the worker were committed, that the most humiliating and vexatious comments were uttered numerous times, all of which were prejudicial to the dignity of the worker. All of the incidents and the cruelty that they involved differ greatly from what is likely to occur in a normal work environment.
>
> [59] In short, the Commission des lésions professionnelles believes that the worker demonstrated, based on a preponderance of evidence, that the established facts constitute "an unforeseen and sudden event" within the meaning of the case law.
>
> [60] In addition, these incidents are traumatizing enough, in and of themselves, to cause an illness of a psychological nature and furthermore, the medical evidence establishing this link is unequivocal. Therefore, the post-traumatic stress disorder and adjustment disorder with depressed mood diagnosed by Doctor Cadivy on April 26, 2012, as well as the post-traumatic stress diagnosed by Doctor Séguin on May 28, 2013, are occupational injuries sustained as a result of a work-related accident.
>
> [61] Since the events that caused the occupational injury started on October 17, 2007, and led to the resignation of the worker on June 21, 2010, the Commission des lésions professionnelles finds that the occupational injury was sustained on June 21, 2010.

[48] Mr. Duverger's testimony about certain events, even though he did not go into all the details, together with the findings of fact made by Marie Langlois, the administrative judge, gave the Tribunal some insight into Mr. Duverger's work environment.

[49] The evidence also confirms that Mr. Duverger resigned from his position on June 21, 2010, as he was no longer able to tolerate the situation at Aéropro. He then left Chibougamau and settled in Gatineau.

[50] It was several months after his resignation that he received a number of emails from Mr. Dallaire that he considered to be harassing. These emails were sent some time after Mr. Duverger filed a claim with the CSST for an occupational injury of a psychological nature. It is this claim that led to the decision rendered by Ms. Langlois on June 27, 2013.

[51] In the Tribunal's opinion, this is the crux of Mr. Duverger's complaint. Both Mr. Duverger and the Respondent filed the emails that were exchanged between Mr. Dallaire and Mr. Duverger.

[52] The first email was sent by Mr. Dallaire on April 23, 2012, 46 days after the claim was filed with the CSST. The subject line of the email reads *PARASITE* and the email address used was *ymtmeteo@live.ca*. The full contents of Mr. Dallaire's email are provided below:

> [TRANSLATION]
>
> You are the biggest idiot that I have had to work with in 25 years. So go back to your country because over here, you are just a parasite.

[53] Mr. Duverger replied to this email the next day, on April 24, 2012, and copied two individuals: Richard Légaré, who was a member of the management team, and Pauline Gagnon, who was the human resources manager and assistant to Aurèle Labbé, the CEO of Aéropro. The full contents of Mr. Duverger's email are provided below:

> [TRANSLATION]
>
> Mr. Dallaire,
>
> I am a human being, not a parasite. Obviously, you do not understand that yet. I would be able to work today if you had treated me properly. It is your fault.
>
> My country is Canada and I agree with the ruling by Transport Canada:

> [TRANSLATION] “The conduct and history of 2553-4330 Québec Inc. [Aéropro] and its chief executive officer reveal a history and culture of delinquent operations and support the conclusion that this company acts in a manner that endangers and undermines aviation safety and the safety of its passengers and crew and the public”, as stated in paragraph 60 of the federal government's response, challenging the carrier’s recent application for an injunction.
>
> Paragraph 17, adds that the history of the carrier and its president [TRANSLATION] "reveals that this company has stubbornly flouted, disregarded and ignored the requirements provided in legislation and regulations and has failed to comply with various notices of non-compliance issued by TC [Transport Canada] over the years.”
>
> In the same document, the Department goes back to 1993 to recall that Aéropro was involved in five accidents, including four since 2001. [TRANSLATION] “Two of these accidents caused a total of eight deaths and two others caused injuries to six occupants, two of whom were seriously injured”.
>
> Most of the pilots I have spoken to also agree with this ruling.

[54] That same day, Mr. Dallaire sent another email to Mr. Duverger entitled *Duverger dit le CON* [*Duverger the IDIOT*], still using the same email address, i.e., *ymtmeteo@live.ca*. He wrote as follows:

> [TRANSLATION]
>
> Everything that you have just written to me confirms that you are, in fact, just a fucking idiot

[55] In addition, on April 25, 2012, he sent another email entitled *io le trou d’cul* [hey asshole]*:*

> [TRANSLATION]
>
> If you ever show up here, you can expect a welcoming committee

[56] That same day, Mr. Duverger sent him a reply:

> [TRANSLATION]
>
> You should check the dictionary for the meaning of “welcoming committee”.

> I sent my claim to the CSST on March 26. Why are you insulting me 1 month later? You made me suffer so much, so I clearly deserve the CSST.

[57] Mr. Dallaire later responded as follows:

> [TRANSLATION]
>
> All that I will give you is a kick in the butt that will send you back to Paris

[58] Shortly after sending this email, Mr. Dallaire sent another, adding the following:

> [TRANSLATION]
>
> I suggest that you file your stupid complaint with the UN and if I am summoned; I will go there.

[59] Shortly afterwards, Mr. Dallaire continued, sending a 3rd email:

> [TRANSLATION]
>
> Can you give me your phone number? Mine is [###]
>
> [The Tribunal deliberately omitted the phone number provided.]

[60] During the evening of May 2, 2012, Mr. Dallaire sent another email to Mr. Duverger, without a subject, still using the same email address, *ymtmeteo@live.ca*:

> [TRANSLATION]
>
> To His Royal Highness; Laurent the First of his name
>
> Given your need to benefit as much as possible from social programs in Quebec and Canada (unemployment insurance, social assistance, CSST, health insurance and hospitalization, etc.), I suggest the following.
>
> You can find a room in the psychiatric wing of the hospital of your choice. You will be housed there, fed, medicated and treated by a psychiatrist. And all of that will not cost you anything. It is more profitable than the CSST and it will make you a very honourable citizen who will no doubt receive the Order of Canada.
>
> Respectfully,

> Raymond Dallaire, a simple descendant of a family of farmers since 1640, since New France.

[61] Finally, Mr. Dallaire sent one last email, on May 7, 2012, using the same email address, indicating *conseil* [advice]*)* in the subject line*:*

> Go back to your country. To your mum and/or your dad. Because over here you have no future and you are becoming depressed and no one can help you.

[62] That said, do these emails constitute harassment in matters related to employment under paragraph 14(1)(c) of the *CHRA*? Two components must be analyzed by the Tribunal: (1) the *harassment* and (2) the *matters related to employment*.

[63] First, harassment is not defined in the *CHRA*. However, the case law of the Tribunal and the courts of justice have put some guidelines in place for its interpretation. For example, in *Morin v. Canada (Attorney General)* 2005 CHRT 41 [*Morin*], member Athanasios D. Hadjis wrote the following, in paragraphs 245 and 246:

> [245] It is a discriminatory practice, under s. 14 of the *Act*, to harass an individual on a prohibited ground of discrimination in matters related to employment.
>
> [246] Harassment, as proscribed under the *Act*, has been broadly defined as unwelcome conduct related to one of the prohibited grounds of discrimination that detrimentally affects the work environment or leads to adverse job-related consequences for the victims (*Janzen v. Platy Enterprises Ltd.* [1989] 1 S.C.R. 1252 at 1284; *Rampersadsingh v. Wignall (No. 2)* (2002), 45 C.H.R.R. D/237 at para. 40 (C.H.R.T.)). In *Canada (HRC) v. Canada (Armed Forces) and Franke*, [1999] 3 F.C. 653 at paras. 29-50 (F.C.T.D.) (*Franke*), Madame Justice Tremblay-Lamer articulated the test for harassment under the *Act*. In order for a complaint to be substantiated, the following must be demonstrated:
>
> i. The respondent's alleged conduct must be shown to be related to the prohibited ground of discrimination alleged in the complaint (in the present case, the Complainant's colour). This must be determined in accordance with the standard of a reasonable person in the circumstances of the case, keeping in mind the prevailing social norms.
>
> ii. The acts that are the subject of the complaint must be shown to have been unwelcome. This can be determined by assessing the

> complainant's reaction at the time of the alleged incidents of harassment and ascertaining whether he expressly, or by his behaviour, demonstrated that the conduct was unwelcome. A verbal "no" is not required in all circumstances - a repetitive failure to respond to a harasser's comments constitutes a signal to him that his conduct is unwelcome. The appropriate standard against which to assess a complainant's reaction will also be that of a reasonable person in the circumstances.
>
> iii. Ordinarily, harassment requires an element of persistence or repetition, but in certain circumstances even a single incident may be severe enough to create a hostile environment. For instance, a single physical assault may be serious enough to constitute harassment, but a solitary crude joke, although in poor taste, will not generally be enough to constitute harassment since it is less likely, on its own, to create a negative work environment. The objective, reasonable person standard is used to assess this factor as well.
>
> iv. Finally, where a complaint is filed against an employer regarding the conduct of one or more of its employees, as in the present case, fairness demands that the victim of the harassment, whenever possible, notify the employer of the alleged offensive conduct. This requirement exists where the employer has a personnel department with a comprehensive and effective harassment policy, including appropriate redress mechanisms, which are already in place.

[64] Member Hadjis relied on the decision rendered by the Supreme Court of Canada in *Janzen v. Platy Enterprises Ltd.* [1989] 1 S.C.R. 1252, and the decision rendered by the Federal Court in *Canada (HRC) v. Canada (Armed Forces) and Franke*, [1999] 3 F.C. 653.

[65] The principles set out in *Morin* were adopted by our Tribunal in different decisions. For example, *Dawson v. Canada Post*, 2008 CHRT 41, *Hill v. Air Canada*, 2003 CHRT 9, *Alizadeh-Ebadi v. Manitoba Telecom Services Inc.*, 2017 CHRT 36, *Croteau v. Canadian National Railway Company*, 2014 CHRT 16, *Day v. Canada Post Corporation*, 2007 CHRT 43, *Stanger v. Canada Post Corporation*, 2017 CHRT 8 [*Stanger*], *Sidoo v. International Longshoremen's and Warehousemen's Union, Local 502* 2015 CHRT 21 [*Sidoo*], affirmed 2017 FC 678, to name but a few.

[66] There is no doubt that the emails sent by Mr. Dallaire were hostile, degrading, and marked by viciousness and vulgarity. Based on just a few emails, the Tribunal is able to evaluate his state of mind and his opinion of Mr. Duverger.

[67] Moreover, the Tribunal cannot completely ignore the context that existed between Aéropro and Mr. Duverger, especially regarding events that occurred while Mr. Duverger was still an employee. The Tribunal will not repeat all the findings of fact made by Ms. Langlois, the administrative judge (see *L.D. et Aéropro*, 2013 QCCLP 3939), but it is impossible to remain insensitive to what Mr. Duverger must have endured while he was employed by Aéropro. Even though the Tribunal's role is not to make findings of fact concerning what may have occurred during the course of his employment, the fact remains that the relationship that existed between the parties, which lasted for several years, is still relevant. An analysis of matters concerning harassment requires the Tribunal to apply the standard of a reasonable person in the circumstances of the case, while keeping in mind social norms. Therefore, the emails that Mr. Dallaire sent to Mr. Duverger between April 23 and May 7, 2012, must be evaluated in this specific context, while considering the prevailing circumstances between the parties.

[68] These emails were sent repeatedly; they were inappropriate, serious and unwelcome. Not only did Mr. Dallaire send a series of emails between April 23 and 25, to which Mr. Duverger replied, but he also sent others on May 2 and on May 7, 2012.

[69] On April 25, Mr. Duverger went to the hospital in order to receive medical care for his condition. He went to the emergency room at the CSSSG in Hull, where, the very next day, he was referred to a psychiatrist, Dr. Alexandre Cavidy. Dr. Cavidy wrote a report concerning Mr. Duverger's condition and the Respondent filed this report into evidence. This report was not challenged at the hearing.

[70] Dr. Cavidy made an axis 1 diagnosis of adjustment disorder with anxiety and moderate depressed mood, and on axis IV, he indicated that Mr. Duverger was socially isolated and far away from his family, and that he had been through a traumatic experience at his previous job and was currently not involved in any professional activities. He mentioned that the Complainant did not have a previous psychiatric history, that psychiatric hospitalization was not required and that his health condition made him unfit to resume working for an indefinite period of time.

[71] In light of this report and the contents of the emails sent by Mr. Dallaire, it is clear that Mr. Duverger perceived the emails as an attack. Moreover, in the emails he sent to Mr. Dallaire as well as to Ms. Gagnon and Mr. Labbé on April 25 and 27, Mr. Duverger also indicated that the comments in the emails were unacceptable. The Tribunal therefore finds that Mr. Dallaire's comments were not appreciated and inappropriate and that Mr. Duverger clearly expressed his disapproval.

[72] Considering the circumstances, particularly the applicable context during Mr. Duverger's employment, it is impossible for the Tribunal to conclude that Mr. Dallaire's emails constituted vulgar jokes or jokes in bad taste. The Tribunal finds, while remaining mindful of established social norms, that a reasonable person who experienced the same circumstances as Mr. Duverger, including the applicable context while he was employed by Aéropro, would also have perceived the emails from Mr. Dallaire as harassment.

[73] The Respondent attempted to demonstrate that it was Mr. Duverger who had actually harassed Aéropro and its employees. In fact, the evidence shows that the Complainant was insistent in various respects. The Tribunal notes that Mr. Duverger was most notably insistent with Mr. Harpin of the Commission, as well as with Johanne Blanchette of the Labour Program. This insistence is also evident in some of the Complainant's submissions before the Federal Court, which were filed at the hearing, and even in his submissions before this Tribunal and in his pleadings.

[74] Even the report by Dr. Cavidy explains that during the emergency psychiatric consultation on April 26, 2012, Mr. Duverger arrived

> [TRANSLATION]
>
> . . . with two plastic bags filled with administrative documents that he tried to show me several times in order to justify his statements and to prove that he was telling the truth. Verbal output was relatively accelerated, sometimes with a tendency to stammer. Facial expression was sad, and his face generally looked tired.

[75] The emails that Mr. Duverger sent to his former employer were insistent, sometimes excessive and even confusing. For example, in his response to Mr. Dallaire on

April 24, 2012, he cites a ruling by Transport Canada that refers to Aéropro's conduct and history, which was not necessary under the circumstances.

[76] This was also supported by the testimonies provided by Mr. Labbé and Mr. Légaré, who informed the Tribunal that they had received repeated emails from the Complainant. The Tribunal does not call that part of their testimony into question, as it is also supported by the evidence.

[77] The evidence also shows that the Complainant contacted Mr. Dallaire prior to the hearing before the Tribunal. The comments that were made dissuaded Mr. Dallaire from testifying at the hearing. The evidence also shows that the Complainant tried to record that conversation. The Complainant demonstrated recklessness. These types of actions could potentially constitute intimidation, which could constitute an offence within the meaning of sections 59 and 60 of the *CHRA*. It is not the Tribunal's role to render a decision on that issue. However, I cannot overlook Mr. Duverger's tenacity.

[78] That said, the Tribunal notes that Mr. Duverger definitely has a thirst for justice. He sincerely believes that his rights were violated and is seeking relief, through different means. No one can deny that many of his efforts were in fact successful, since different authorities sided with him. Even though he was insistent in several respects, and was even excessive at times, without it being completely necessary or relevant for him to adopt such conduct, Mr. Duverger obtained relief and compensation for acts committed by Aéropro and its staff. Mr. Duverger is currently receiving CSST benefits because the CLP found that he had sustained an occupational injury. It is important to remember that the Complainant's occupational injury and medical condition resulted from the actions of the employer and the treatment he suffered while he was employed by the employer.

[79] What is clear is that the relationship between Aéropro and Mr. Duverger is toxic and poisoned. On both sides, each and every action is perceived negatively and the Tribunal must not be distracted by this toxic relationship. It must remain focused on the evidence filed at the hearing in order to determine whether harassment occurred.

[80] In conclusion, it is clear to the Tribunal that Mr. Duverger was harassed by Mr. Dallaire, who was still an employee of Aéropro. The Tribunal must now determine

whether this harassment occurred in matters related to employment within the meaning of paragraph 14(1)(c) of the *CHRA*.

[81] It is important to remember that when Mr. Duverger received the emails from Mr. Dallaire, starting on April 23, 2012, he no longer worked for Aéropro since June 21, 2010, the date of his resignation. Both the Complainant and the Commission argued that paragraph 14(1)(c) of the *CHRA* covers post-employment harassment. The Respondent claimed, on the contrary, that this provision does not cover that type of harassment.

[82] Therefore, the question here is whether post-employment harassment is covered under paragraph 14(1)(c) of the *CHRA*, i.e., does harassment "in matters related to employment" protect individuals when their employment relationship has ended? In order to answer this question, it is necessary to interpret this provision from a statutory perspective.

[83] For the following reasons, I cannot subscribe to Aéropro's rather restrictive interpretation and I believe that paragraph 14(1)(c) of the *CHRA* covers post-employment harassment, that is, the harassment of an individual when the employment relationship has ended.

A. Interpretation – harassment in matters related to employment

[84] First, let us recall the Supreme Court's guidance on the modern principle of statutory interpretation:

> Today there is only one principle or approach, namely, the words of an Act are to be read in their entire context and in their grammatical an ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament.

(See E.A. Driedger, *Construction of Statutes* (2nd ed. 1983), p. 87, adopted by the Supreme Court of Canada in *Rizzo & Rizzo Shoes Ltd. (Re)* [1998] 1 S.C.R. 27, at para. 21 [Rizzo]. See also *British Columbia Human Rights Tribunal v. Schrenk*, 2007 SCC 62 [*Schrenk*], at para. 30).

[85] The Supreme Court of Canada recently recalled this principle in *Schrenk*, at para. 30. It also reiterated that added to the modern principle are the particular rules that apply to the interpretation of human rights legislation.

[86] Like human rights statutes which guarantee fundamental protections in our society, courts must also adopt a broad and liberal interpretation so that these laws can achieve their objectives (*Ontario Human Rights Commission v. Simpson-Sears Ltd.*,1985 CanLII 18 (SCC), [1985] 2 S.C.R. 536, pp. 546-547; *Canadian National Railway Company v. Canada (Canadian Human Rights Commission)*, 1987 CanLII 109 (SCC), [1987] 1 S.C.R. 1114, pp. 1133-1136, *Robichaud v. Canada (Treasury Board)*, 1987 CanLII 73 (SCC), [1987] 2 S.C.R. 84 [*Robichaud*], pp. 89-90.).

[87] There is no doubt that the *CHRA* is human rights legislation that ensures quasi-constitutional guarantees (see, for example, *Canada (Attorney General) v. Johnstone*, 2014 FCA 110 (CanLII), 459 N.R. 82, *Canada (Human Rights Commission) v. Canada (Attorney General)*, 2016 FCA 200 (CanLII). Therefore,

> . . . courts must favour interpretations that align with the purposes of human rights laws like the Code rather than adopt narrow or technical constructions that would frustrate those purposes (R. Sullivan, *Sullivan on the Construction of Statutes* (6th ed. 2014), at §§19.3-19.7).
>
> [Emphasis added]

[88] This only confirms what the Supreme Court taught us in 1992, in the decision rendered in *Zurich Insurance Co. v. Ontario (Human Rights Commission)*, [1992] 2 SCR 321, at page 339, in which it wrote:

> In approaching the interpretation of a human rights statute, certain special principles must be respected. Human rights legislation is amongst the most pre-eminent category of legislation. It has been described as having a "special nature, not quite constitutional but certainly more than the ordinary..." *(Ontario Human Rights Commission v. Simpsons-Sears Ltd*., 1985 CanLII 18 (SCC), [1985] 2 S.C.R. 536, at p. 547). One of the reasons such legislation has been so described is that it is often the final refuge of the disadvantaged and the disenfranchised. As the last protection of the most vulnerable members of society, exceptions to such legislation should be narrowly construed (*Brossard (Town) v. Quebec (Commission des droits*

> *de la personne)*, 1988 CanLII 7 (SCC), [1988] 2 S.C.R. 279, at p. 307; see also *Bhinder v. Canadian National Railway Co.*, 1985 CanLII 19 (SCC), [1985] 2 S.C.R. 561, at pp. 567 and 589).
>
> [Emphasis added]

[89] That said, the Supreme Court reiterated, still in the *Schrenk* decision, at paragraph 32, that even though human rights legislation must be given a broad and liberal interpretation so as to better achieve its goals, this "interpretive approach does not give a board or court license to **ignore the words of the Act** in order to prevent discrimination wherever it is found": *University of British Columbia v. Berg*, 1993 CanLII 89 (SCC), [1993] 2 S.C.R. 353, at p. 371. [Emphasis added].

[90] Moreover, section 12 of the *Interpretation Act*, R.S.C. 1985, c. I-21, also provides that "every enactment is deemed remedial, and shall be given such fair, large and liberal construction and interpretation as best ensures the attainment of its objects".

[91] In the present case, even though the Commission did not refer the portion of Mr. Duverger's claim under paragraph 7(b) of the C*HRA*, the text of this paragraph is relevant in the context of the Tribunal's statutory interpretation, since it is necessarily part of the scheme of the *CHRA*. It is worth reproducing both the English and French versions of paragraphs 7(b) and 14(1)(c) of the *CHRA* here:

Employment	**Emploi**
7 It is a discriminatory practice, directly or indirectly,	7 Constitue un acte discriminatoire, s'il est fondé sur un motif de distinction illicite, le fait, par des moyens directs ou indirects :
(a) to refuse to employ or continue to employ any individual, or	a) de refuser d'employer ou de continuer d'employer un individu;
(b) in the course of employment, to differentiate adversely in relation to an employee,	b) de le défavoriser en cours d'emploi.
on a prohibited ground of discrimination.	
Harassment	**Harcèlement**

14 (1) It is a discriminatory practice,	14 (1) Constitue un acte discriminatoire, s'il est fondé sur un motif de distinction illicite, le fait de harceler **un individu** :
(a) in the provision of goods, services, facilities or accommodation customarily available to the general public,	a) lors de la fourniture de biens, de services, d'installations ou de moyens d'hébergement destinés au public;
(b) in the provision of commercial premises or residential accommodation, or	b) lors de la fourniture de locaux commerciaux ou de logements;
(c) **in matters related to employment**,	c) **en matière d'emploi**.
to harass **an individual** on a prohibited ground of discrimination.	

[92] I believe that the expressions *en matière d'emploi*, *in matters related to employment*, as well as *individu*, *individual* are determinative under the circumstances. What is interesting is that Parliament did not use the same terms in section 7 and section 14 of the *CHRA* for both expressions.

[93] Mindful of these principles of statutory interpretation, the Tribunal will start by analyzing the term *individu*, *individual* used in section 14 of the *CHRA*.

(i) Individu, individual

[94] In section 7 of the *CHRA*, Parliament determined that it is a discriminatory practice to refuse to employ or continue to employ any individual; or, in the course of employment, differentiate adversely in relation to an employee, on a prohibited ground of discrimination. Since the French version of paragraph 7(b) of the *CHRA* uses the wording "de le défavoriser", paragraph 7(a) of the *CHRA* must necessarily be read in order to understand that the "le" refers to "un individu" [an individual].

[95] The English version of paragraph 7(a) of the *CHRA* reads rather "to refuse to employ or continue to employ any individual", whereas paragraph 7(b) of the *CHRA* states "in the course of employment, to differentiate adversely in relation to an employee". The English version is therefore more precise because it uses the term *employee* in paragraph (b).

[96] The Tribunal therefore notes a discrepancy between the English and French versions. When it comes to interpreting bilingual statutes, the Supreme Court of Canada has held as follows:

> A principle of bilingual statutory interpretation holds that where one version is ambiguous and the other is clear and unequivocal, the common meaning of the two versions would *a priori* be preferred; see: Côté, *supra*, at p. 327; and *Tupper v. The Queen*, [1967] S.C.R. 589. Furthermore, where one of the two versions is broader than the other, the common meaning would favour the more restricted or limited meaning: see Côté, *supra*, at p. 327; *R. v. Dubois*, [1935] S.C.R. 378; *Maurice Pollack Ltée v. Comité paritaire du commerce de détail à Québec*, [1946] S.C.R. 343; *Pfizer Co. v. Deputy Minister of National Revenue for Customs and Excise*, [1977] 1 S.C.R. 456, at pp. 464-65; and *Gravel v. City of St-Léonard*, [1978] 1 S.C.R. 660, at p. 669.

(see *Schreiber v. Canada (Attorney General)*, [2002] 3 S.C.R. 269, 2002 SCC 62 (CanLII), interpretation also adopted in *R v. Daoust*, [2004] 1 SCR 217, at paras. 26 and 27).

[97] I am of the view that even though the French version of paragraph 7(b) refers to the word “individu” and the English version refers to the word, “employee”, the common meaning that can be drawn from the two versions is clear and unequivocal. The “*individu*” in the French version is equivalent to the "*employee*” in the English version, since in the French version, the word “individu” is qualified by the terms “en cours d’emploi” [in the course of employment]; an “individu, en cours d’emploi” is none other than an employee.

[98] This clarification of the term *individu* is relevant because section 14 of the *CHRA* also uses this term. It is therefore necessary to interpret the term “individu” in such a way as to give it the same meaning in both sections 7 and 14.

[99] That said, according to French dictionary *Le Petit Robert*, the word *individu*, in its ordinary meaning, signifies “personne quelconque, que l’on ne peut ou que l’on ne veut pas nommer”. According to the *Oxford English Dictionary*, the word *individual* is defined as “a single human person . . .”.

[100] In its common, ordinary meaning, *individu* or *individual* is a broad term. An *individu* or *individual* is any human person, which is similar to the interpretation of the French word *personne* in *Schrenk*, where the Supreme Court wrote as follows in paragraph 34:

> The place to start is with the term “person” in the first line of s. 13(1). In its ordinary meaning, the term “person” generally refers to a human being. In the context of the Code, it also defines the class of actors against whom the prohibition in s. 13(1)(b) applies. The ordinary meaning of “person” is broad; certainly, it encompasses a broader range of actors than merely any person with economic authority over the complainant. It is significant that the Legislature chose to prohibit employment discrimination by any “person”. Had it intended only to prohibit employment discrimination by employers — or some other narrow class of individuals — it could easily have done so by using a narrower term than “person”.

[101] It should be noted that in the *Schrenk* decision, the term *person*, from paragraph 13(1)(b) of the *Human Rights Code*, was interpreted by the British Columbia Human Rights Tribunal. However, this term is used in a special context, in that “**a person** must not discriminate against a person regarding employment or any term or condition of employment”. It is this first *person* that was interpreted, that is, the one who may not discriminate against another person.

[102] In our case, the Tribunal must instead analyze the term *individual*, the person who was harassed and not the one who harassed (“le fait de harceler un individu”, “to harass an individual”).

[103] Nevertheless, in my opinion, the Supreme Court’s comments are still relevant. If Parliament wanted to ensure that the protection provided under paragraph 14(1)(c) of the *CHRA* applied to a narrower category of individuals, for example, to a worker or an employee, it could very well have done so and used a more specific term with a narrower meaning than the term *individual*.

[104] This idea is reinforced even further by paragraph 7(b) of the *CHRA*, where Parliament intentionally used the word *employee* in the English version, when it could very well have used the same word in section 14(1)(c) of the *CHRA*, but chose not to do so. The Tribunal assumes that Parliament is prudent in its use of language, given the importance of the words selected (Ruth Sullivan, *Statutory Interpretation*, 3rd ed, Toronto, Irwin Law, 2016 at pages 40 and 41). Moreover, based on the presumption of consistent expression, the Tribunal must assume that Parliament intends to adopt laws that are consistent. If it uses the same words, then it wants two expressions to have the same

meaning. Conversely, if it uses different words, then it wants the expressions to have a different interpretation (*2553-4330 Quebec Inc. v. Duverger*, 2018 FC 377, at para. 42, citing Ruth Sullivan, *Statutory Interpretation*, above, at pages 43 and 44).

[105] It is clear to the Tribunal that by using the term *individu*, *individual*, Parliament intended for paragraph 14(1)(c) of the *CHRA* to cover a broad category of persons and that it does not specifically target a worker or an employee, unlike paragraph 7(b) of the *CHRA*. In a recent decision rendered in *Tan v. Canada (Attorney General)*, 2018 FCA 186, the Federal Court of Appeal made the same observation, namely, that Parliament intended for the *CHRA* to benefit a broad category of persons. In paragraphs 75 and 76, the Federal Court of Appeal wrote as follows:

> [75] The CHRA is concerned with discriminatory practices. The sections which define discriminatory practices proscribe those practices with respect to "any individual" or "an individual": see paragraphs 5(*a*) and (*b*), paragraphs 6(*a*) and (*b*), paragraph 7(*a*), paragraphs 9(1)(*a*) and (*c*), section 10, and subsection 14(1) of the CHRA. In some cases, a more restrictive descriptor is used because the focus is persons with a particular status: see, for example, the reference to "employee" in paragraph 7*(b*) dealing with discrimination in employment, the reference to "members of [an] organization" in paragraph 9(1)(*b*) dealing with discrimination in employee organizations, the reference to "male and female employees" in subsection 11(1) dealing with equal wages.
>
> [76] In my view, these inclusive references demonstrate an intention to extend the benefit of the legislation to as broad a group of persons as possible.
>
> [Emphasis added]

[106] That said, it is clear to the Tribunal that Mr. Duverger is an individual within the meaning of the *CHRA* and that the protection offered in section 14 is not limited to workers or employees.

[107] The Tribunal must now analyze the expression *en matière d'emploi*, *in matters related to employment*.

(ii) En matière d'emploi, in matters related to employment

[108] The Respondent placed considerable emphasis on its interpretation of paragraph 14(1)(c) of the *CHRA*, claiming that only employees are protected from harassment. In effect, Aéropro set out a number of arguments in support of the idea that the expression “in matters of employment” means that the harassment allegations must have occurred during the period of employment. Therefore, according to the Respondent, since Mr. Duverger was no longer employed by Aéropro at the time of the events, within the meaning of section 25 of the *CHRA*, paragraph 14(1)(c) of the *CHRA* would not apply.

[109] The Tribunal does not agree with this interpretation and does not believe that in order for paragraph 14(1)(c) of the *CHRA* to apply, the alleged harassment must have occurred during, throughout, or in the course of the employment period.

[110] In order to interpret the terms “in matters of employment,” it is important to read the *CHRA* as a whole. The presumption of consistent expression requires the Tribunal to assume that Parliament intends to enact laws that are consistent. Consequently, if Parliament uses the same terms in two expressions, it should be assumed that it intended for these expressions to have the same meaning. Conversely, if Parliament uses different terms, then it should be assumed that it intended for the expressions to be interpreted differently (see *2553-4330 Quebec Inc. v. Duverger*, 2018 FC 377, at para. 42, citing Ruth Sullivan, *Statutory Interpretation*, 3rd ed. Toronto, Irwin Law, 2006, at pages 43 and 44).

[111] The Tribunal therefore finds that the expression used in paragraph 7(b) of the *CHRA* must be interpreted differently from the expression used in paragraph 14(1)(b) of the *CHRA*, because Parliament used two very distinct expressions; *en matière d'emploi*, *in matters related to employment*, cannot be interpreted as meaning *en cours d'emploi*, *in the course of employment*. Indeed, if Parliament had wanted to use the terms *en cours d'emploi*, *in the course of employment*, as it did in paragraph 7(b) of the *CHRA*, it could simply have done so. Instead, it opted to use the terms *en matière d'emploi*, *in matters related to employment*.

[112] According to *Le Petit Robert* (*Le Petit Robert*. *Dictionnaire alphabétique et analogique de la langue française* [*Le Petit Robert*], new vintage edition 2012, Paris, Dictionnaires Le Robert, 2837 pages), the expression *en matière de*, which is found in

paragraph 14(1)(c) of the *CHRA* means “dans le domaine, sous le rapport de, en ce qui concerne (tel objet)”

[113] In the English version, *in matters related to*, the term *matters*, according to the *Oxford English Dictionary* (*Concise Oxford English Dictionary* [*Oxford English Dictionary*], Oxford University Press, eleventh edition 2004, 1708 pages), refers to “an affair or situation under consideration; a topic” and *related to*, is defined as meaning “concern”.

[114] The common meaning of the French and English texts is unambiguous. When Parliament uses the expression, “harassment in matters related to employment,” the Tribunal understands this expression to mean “harassment concerning employment or in the area of employment”.

[115] With respect to the terms, *en cours d'emploi*, *in the course of employment*, found in paragraph 7(b) of the *CHRA*, *Le Petit Robert* defines *en cours de* as “durant, pendant […] dans le courant de”. In the English version, *in the course of* means “during”, according to the *Oxford English Dictionary*. Once again, there is no ambiguity between the two versions. According to paragraph 7(b) of the *CHRA*, it is the Tribunal’s understanding that adverse differential treatment must occur throughout, during employment.

[116] Therefore, the Tribunal finds that Parliament did not intend for the expressions used in paragraph 7(b) and paragraph 14(1)(c) of the *CHRA* to have the same meaning. The Tribunal cannot accept Aéropro’s interpretation that the expression *en matière d’emploi*, *in matters related to employment*, means *en cours d'emploi*, *in the course of employment*.

[117] That said, the purpose of the *CHRA* is set out in section 2. On that subject, the Supreme Court held as follows at page 1134 of *CN v. Canada (Human Rights Commission)*, [1987] 1 SCR 1114:

> The purposes of the Act would appear to be patently obvious, in light of the powerful language of s. 2. In order to promote the goal of equal opportunity for each individual to achieve "the life that he or she is able and wishes to have", the Act seeks to prevent all "discriminatory practices" based, *inter alia*, on sex. It is the practice itself which is sought to be precluded. The purpose of the Act is not to punish wrongdoing but to prevent discrimination.

[Emphasis added]

(see also *Schrenk*, above, at para. 85).

[118] The purpose of the *CHRA* is also to remedy socially undesirable conditions, notwithstanding the reasons for their existence (*Robichaud*, above, at para. 10).

[119] Moreover, during the parliamentary debates leading to the enactment of the *CHRA*, Parliament noted the then absence of an ". . . act of parliament which provides over-all, comprehensive prohibition of discriminatory conduct by official and private individuals within the federal domain" and the need to enact the *CHRA* in order to address this situation (see the comments of the Hon. Ron Basford, Minister of Justice, in House of Commons Debates, 2nd session, 13th Parliament, 25-26 Elizabeth II, Volume III, 1976-1977, February 11, 1977, at page 2976).

[120] It cannot be said often enough; human rights statutes must be given a broad, liberal and purposive interpretation. The rights protected by these statutes must be interpreted broadly, whereas exceptions and defences must be narrowly construed. In responding to general terms and concepts in human rights statutes, tribunals and courts must adopt an organic and flexible approach, and the provisions in these statutes must necessarily be adapted to the social conditions of the time, but must also consider evolving conceptions of human rights (see, for example, *Québec (Commission des droits de la personne et des droits de la jeunesse) v. Montréal (City); Quebec (Commission des droits de la personne et des droits de la jeunesse) v. Boisbriand (City)*, [2001] 1 SCR 665 [*Boisbriand*], where, at paragraph 29, the Supreme Court cites Professor R. Sullivan, *Driedger on the Construction of Statutes* (3rd ed. 1994), at pp. 383 and 384).

[121] The current trend in interpreting human rights statutes broadens the scope of the concept of harassment in matters related to employment. One simply needs to read the Supreme Court decision rendered in *Schrenk*, above, to believe this. In that decision, it was determined that an employee could be discriminated against by another employee, working in the same workplace, even if that employee was subject to the authority of a different employer (see the Supreme Court interpretation of paragraph 13(1)(b) of the *Human Rights Code [BC Human Rights Code]*, RSB, 1996, c 10, of British Columbia. See

also *2553-4330 Québec Inc. v. Duverger*, 2018 FC 377, at paras. 43 to 45). In *Schrenk*, the Supreme Court therefore decided to expand the protection offered against discriminatory harassment.

[122] In so doing, it also expanded the liability of employers for acts that are committed by their employees and that may be discriminatory. This is consistent with section 65 of the *CHRA*, which aims, in part, to make an employer liable for discriminatory practices engaged in by its employees.

[123] Also in the *Schrenk* decision, the Supreme Court interpreted the expression "*relativement à l'emploi*" "*regarding employment*" found in paragraph 13(1)(b) of the *BC Human Rights Code*. This paragraph reads as follows:

> (1) A person must not (b) discriminate against a person regarding employment or any term or condition of employment.

[124] The Supreme Court writes the following at paragraphs 37, 38 and 40 of its decision:

> [37] Next, the words "regarding employment" are critical because they delineate the kind of discrimination that s. 13(1)(b) prohibits. Initially, I note that "regarding" is a term that broadly connects two ideas. **In this case, the discrimination at issue must be "regarding" employment in that it must be *related* to the employment context in some way.** . . .
>
> [38] Based on my reading of the Code, the term "regarding employment" does not solely prohibit discrimination within hierarchical workplace relationships. If this were the case, then the words discrimination "regarding employment" would essentially mean discrimination "by employers or workplace superiors". In my view, s. 13(1)(b) does not restrict who can *perpetrate* discrimination. Rather, it defines who can *suffer* employment discrimination. In this way, it prohibits discriminatory conduct that targets *employees* so long as that conduct has a sufficient nexus to the employment context. **Determining whether conduct falls under this prohibition requires a *contextual* approach that looks to the particular facts of each claim to determine whether there is a sufficient nexus between the discrimination and the employment context.** If there is such a nexus, then the perpetrator has committed discrimination "regarding employment" and the complainant can seek a remedy against *that* individual.
>
> . . .

> [40] . . . while I agree that the term “employment” under the Code connotes, inter alia, a relationship between an employer and an employee, it does not follow that discrimination “*regarding employment*” must be perpetrated by someone *within that relationship*. Indeed, it would be unduly formalistic to assume that the only relationship that can impact our employment is that which we share with our employer. Other workplace relationships — those we share with our colleagues, for example — can be sources of discrimination “regarding employment” despite the fact that it is only our employer who controls our paycheck.
>
> [Emphasis added]

[125] In these paragraphs, it is the Tribunal’s understanding that the Supreme Court, following the modern principle of statutory interpretation, applies a contextual approach to conduct that leads to harassment allegations, which takes into account the specific facts of each case. Like the Supreme Court in the *Schrenk* decision, the Tribunal has reached the same conclusion, in the interpretation of paragraph 14(1)(c) of the *CHRA*, since it must also determine whether there is a sufficient nexus between the harassment and the employment context, considering the facts of the case (see *2553-4330 Québec Inc. v. Duverger*, 2018 FC 377, at paras. 39, 43 and 44; see also *Schrenk*, above, at paras. 3 and 38).

[126] While the Respondent relied on the different factors set out by the Honourable Mr. Justice Rowe, also in *Schrenk*, above, to demonstrate that the harassment allegations did not concern matters related to employment (see *Schrenk*, above, at para. 67), the Tribunal is of the view that these factors do not apply in this case. These factors are as follows: (1) whether the respondent was integral to the complainant's workplace; (2) whether the impugned conduct occurred in the complainant's workplace; and (3) whether the complainant’s work performance or work environment was negatively affected.

[127] First, the Tribunal must exercise caution vis-à-vis these factors, because they were developed as part of an analysis of the protection against harassment offered by the *BC Human Rights Code*, and not the *CHRA*. Indeed, even though the *CHRA* and the *BC Human Rights Code* have similarities, the *Schrenk* decision must also be viewed in light of certain important distinctions between these two texts. It is important to remember that the *BC Human Rights Code* does not contain a specific section that protects individuals

against harassment. That is why, historically, section 13 of the *BC Human Rights Code* was created to prohibit discrimination in the context of employment among individuals who are in an employment relationship, within the meaning of *McCormick v. Fasken Martineau Dumoulin*, 2014 SCC 39 [*McCormick]*.

[128] In the *McCormick* case, the Supreme Court had to determine who was in an employment relationship for the purposes of the *BC Human Rights Code*, by relying on two factors: “control exercised by an employer over working conditions and remuneration, and corresponding dependency on the part of a worker”. It is in this context that the *Schrenk* decision broadens the scope of section 13 of the *BC Human Rights Code*, because the Supreme Court decided that this provision also prohibits discrimination committed against employees by perpetrators other than their employer.

[129] Furthermore, the *CHRA* specifically contains a provision that protects individuals against harassment in matters related to employment, unlike the *BC Human Rights Code.* Before section 14 was added to the *CHRA* in the 1980s, a few years after the initial text of the *CHRA* was adopted in the 1970s, the Tribunal analyzed harassment under section 7 of the *CHRA* (the *Robichaud* decision, above, is a good example). Parliament intended to amend the *CHRA* in order to specifically include a provision prohibiting harassment. According to Parliament, the *CHRA* had not proven to be as fully effective as it could have been in terms of addressing harassment. Parliament also feared that considering the text initially enacted, it was still possible for courts of justice to find that the *CHRA* did not prohibit harassment (see House of Commons, minutes of the *Standing Committee on Justice and Legal Affairs* [*Standing Committee on Justice minutes*], December 20, 1982, 1st session, 32nd Parliament, 1980-81-82, p. 114:9).

[130] In so doing, Parliament intended to ensure that individuals who were victims of harassment would have, but also that they would know they had, a recourse under the *CHRA* (*Standing Committee on Justice minutes*, above, also on page 114:9). It is therefore interesting to note that the terms employed by Parliament in paragraph 14(1)(c) of the *CHRA*, adopted well after section 7 of the *CHRA*, are much broader and more flexible than the terms used in section 7.

[131] As explained earlier, the Respondent presented several arguments to persuade the Tribunal to adopt the approach that paragraph 14(1)(c) of the *CHRA* only protects individuals against harassment that takes place "in the course of employment". Indeed, according to the Respondent, the key term in the expression *in matters of employment* is the word *employment*. In that sense, the Respondent drew a parallel between the *Employment Equity Act*, S.C. 1995, c. 44 [*EEA*], under which the Tribunal has jurisdiction to hear an employer's request for review or consider Commission applications for an order confirming direction (see subsections 28(1) and (2) of the *EEA*).

[132] The Respondent notes that the *EEA*, which uses the same expression as paragraph 14(1)(c) of the *CHRA* (*in matters related to employment)*, also concerns issues related to the employer, worker and employee. Consequently, paragraph 14(1)(c) of the *CHRA* should cover workers and employees. The Tribunal understands the parallel drawn by the Respondent between these two same expressions, used in two different statutes in which the Tribunal has jurisdiction: at issue is coherence amongst statutes (Pierre-André Côté [Côté], *The Interpretation of Legislation in Canada*, Carswell, 4th edition, Montreal, 2009, at pages 365 and 366).

[133] That said, the *EEA*, adopted in 1995, is quite distinct from the *CHRA*, which was adopted in 1976–1977 and revised in 1985. The words of an act must be read in their entire context, and in their ordinary and grammatical sense, harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament (*Rizzo*, at para. 21). The Tribunal has no intention of interpreting the words of the *EEA* here. It would be imprudent to automatically infer that because this act uses the same expression as the *CHRA* (*in matters related to employment)*, the same concepts and principles necessarily apply to both interchangeably, in that the meaning of a word is largely derived from its context (see *Côté*, above, at page 369). This argument is not determinative in this case for the purpose of deciding the matter put before the Tribunal.

[134] Aéropro adds that in order to fall within the scope of matters related to employment, the alleged conduct must have affected the dignity of the employee in such a way that it created a hostile or unhealthy work environment. Since Mr. Duverger was no longer an employee and there was no longer a workplace, this type of environment could not have

been created. The Respondent relies, among other things, on certain decisions of the Tribunal, which present the idea of a hostile or unhealthy environment (see *Stanger*, *Sidoo* and *Khiamal v. Greyhound Canada Transportation Corporation* [*Khiamal*], 2007 CHRT 34).

[135] The Tribunal believes that the present case raises specific and very different questions from those raised in the decisions rendered in *Stanger*, *Siddoo* and *Khiamal*, cited by the Respondent.

[136] In *Khiamal*, the incidents alleged by the complainant were experienced at work. One simply needs to read paragraphs 87 and following of the decision to be convinced that this is the case.

[137] In *Stanger*, the complainant alleged that she was harassed in the workplace, referring to a series of events that occurred between 2005 and 2008, when she was still employed by Canada Post Corporation.

[138] Finally, in *Siddoo*, the complainant alleged that she was harassed, among other things, by the union and a training officer in the context of training that she was receiving (see for example, paragraphs 48 to 51). All this occurred while she was still employed.

[139] It is important to remember that the portion of the complaint that was referred to the Tribunal concerned only the post-employment harassment allegations. In my view, the general principles emerging from the decisions in *Stanger*, *Siddoo* and *Khiamal* are relevant to more general harassment concepts. However, in those complaints, the Tribunal did not have to analyze a situation that was similar to and as specific as the present case, that is, to analyze whether paragraph 14(1)(c) of the *CHRA* covers post-employment harassment. These decisions must therefore be seen in their context, in which the complainants, unlike Mr. Duverger, were still employees.

[140] In the same vein, at the hearing, the Respondent also filed decisions of the Alberta Human Rights Commission (formerly known as the Human Rights and Citizenship Commission) in *Abrams v. Calgary Board of Education* [*Abrams*], 2007 AHRC 2, and *Schofield v. AltaSteel Ltd.* [*Schofield*], 2015 AHRC 15.

[141] In both cases, this commission analyzed paragraph 7(1)(b) of the *Alberta Human Rights Act*, which states as follows:

> No employer shall
>
> . . .
>
> (b) discriminate against any person with regard to employment or any term or condition of employment,
>
> because of the race, religious beliefs, colour, gender, gender identity, gender expression, physical disability, mental disability, age, ancestry, place of origin, marital status, source of income, family status or sexual orientation of that person or of any other person.
>
> [Emphasis added]

[142] These two decisions based their reasoning on the Federal Court decision in *Cluff v. Canada (Department of Agriculture)*, [1994] 2 FC 176 [*Cluff*], a judicial review of a decision of our Tribunal (*Cluff v. Sage*, 1992 CanLII 20 (CHRT)).

[143] More specifically, in *Abrams*, the circumstances were different from those in this case because Mr. Abrams was still an employee. The issue was whether his trips were ancillary and incidental to his employment or logically and naturally connected to the employment.

[144] In *Schofield*, the situation was also different because Ms. Schofield alleged that she had been sexually harassed by a work colleague during a strike vote meeting that had taken place outside the workplace and outside working hours. However, she was still an employee.

[145] These two decisions were not identical, but very similar to the *Cluff* decision cited by the Respondent, a decision which was rendered by the Tribunal. In *Cluff*, Ms. Cluff had organized a conference of the Eastern Canada Farm Writers' Association (ECFWA), with her employer's approval. She was responsible for hospitality following a reception. The conference was followed by a buffet dinner. After the buffet dinner, ECFWA had planned to host participants in a hospitality suite located in the same hotel as the conference. Ms. Cluff alleged that she was subjected to sexual harassment by a senior-level employee in

that hospitality suite, after 2 a.m. It is important to note that the complainant was still an employee. The Tribunal therefore had to determine whether the alleged harassment occurred in the course of employment or in matters related to employment, as prescribed in paragraph 14(1)(c) of the *CHRA*.

[146] What is clear is that in *Abrams*, *Schofield* and *Cluff*, the complainants concerned were still employees. At issue was whether the incidental activities (travel, strike vote meeting, reception) during which the alleged discriminatory practices took place were covered by the law. In other words, were these incidental activities in any way related to the employment? That is not the case here, which significantly diminishes the value of these decisions as precedents.

[147] The Tribunal would add that in *Abrams* and *Schofield*, the decisions were rendered by the Alberta Human Rights Commission, whose jurisdiction is different from the Tribunal's jurisdiction. That Commission derives its authority from legislation other than the *CHRA*. The Tribunal is therefore not bound by the decisions of that commission.

[148] More specifically, with respect to the *Cluff* decision rendered by this Tribunal, I believe that the value of that decision, as a precedent, has been diminished considerably.

[149] The decision in *Cluff* was rendered almost 27 years ago (November 12, 1992). Some elements in that decision still apply today, such as the Tribunal's finding that the expressions *en cours d'emploi*, *in the course of employment* and *en matière d'emploi*, *in matters related to employment* should be broadly interpreted in order to include the employer's responsibility to ensure that the work environment remains healthy and to eliminate any discriminatory practices that the employer or its employees committed in the course of employment (*Cluff v. Sage*, CanLII 20 (CHRT)), at page 9). This is consistent with section 65 of the *CHRA*: employers are considered to be responsible for acts or omissions committed by their employees in the course of their employment.

[150] The Tribunal would add that even though the *Cluff* decision was followed as a precedent in the past, it is important to remember that human rights evolve. As mentioned earlier, human rights must not only benefit from a broad, liberal and purposive

interpretation, but the interpretation of general terms and concepts must also be organic and flexible (*Boisbriand*, above, at paras. 383 and 384).

[151] Also, in *Cluff*, the complainant filed a complaint under section 7 and section 14 of the *CHRA*. The Tribunal's decision is primarily based on the *Robichaud* decision, above, which was rendered in a specific context at a time when section 14 of the *CHRA* did not exist. *Robichaud* relied on section 7 of the *CHRA*, which used and continues to use the expression *en cours d'emploi*, *in the course of employment*.

[152] With due respect, I am also of the view that the Tribunal did not consider the distinction between the expressions used in sections 7 and 14 of the *CHRA* and, in failing to do so, conflated both expressions used. As explained earlier, these two provisions do not use the same language (e*n cours d'emploi*, *in the course of employment* and *en matière d'emploi*, *in matters related to employment*). I will not repeat the entire analysis of Parliament's intention and the purpose of the *CHRA*, but I cannot subscribe to the claim that these expressions have the same meaning.

[153] Moreover, relying on *Robichaud*, above, the Tribunal had concluded that the expression *en cours d'emploi*, *in the course of employment* should be understood as meaning "in some way related or associated with the employment". It also established criteria to be considered when determining whether (sexual) harassment took place in the course of employment (see *Cluff v. Sage*, CanLII 20 (CHRT), at page 10).

[154] The Tribunal did not explain whether these criteria are applicable in a situation involving *matters related to employment*. Upon reading the Federal Court decision in *Cluff v. Canada (Department of Agriculture*), [1994] 2 FC 176, I note that the judge also seemed to have noticed that omission since he wrote the following:

> Against the authority of *Robichaud*, the Tribunal established for itself the following criteria to determine whether or not the alleged act or acts of sexual harassment took place in the course of employment (<u>and, presumably, in matters related to employment</u>) . . .
>
> [Emphasis added]

[155] That said, I share the opinion of the Honourable Mr. Justice Martineau, articulated in the decision rendered in *2553-4330 Québec Inc. v. Duverger*, 2018 FC 377, at paragraph 46, concerning the reduced scope of the *Cluff* decision in the current context of human rights. In paragraph 46, he wrote that:

> [46] Third, the applicant relies on a 1993 Federal Court decision in *Cluff* to suggest that it is the complainant who must be "in matters related to employment" and not the employer or the [TRANSLATION] "harasser". With respect for the opposing opinion, I read this decision differently. It indicates rather that the employer must be liable for the discriminatory practices of its employees in their employment context. With respect to the issue of whether an employer may be liable for harassment by an employee outside the workplace (here the employer's email address and computers were used to send the harassing emails), it seems to me that today *Cluff*'s value as a precedent has been considerably diminished. This is confirmed when we compare the Federal Court's restrictive view with the broader approach of other courts and tribunals in more recent matters (see, e.g., *Simpson v Consumers' Association of Canada* (2001), 57 OR (3rd) 351, 209 DLR (4th) 214 at paras 57-61 (CA Ont); *Woiden v Lynn* (2002), 2003 CLLC 230-005, 2002 CanLII 8171 at paras 1, 69–71, 86, 104 (CHRT); *Syndicat des travailleurs et travailleuses Canam Structal (CSN) et Groupe Canam pour son établissement Structal (CSN)*, 2016 QCTA 736 at paras 227–234).

[156] Finally, the Respondent argues that it is the alleged victim of harassment who should be *in matters related to employment*, and not the employer or the alleged harasser. It is therefore the Tribunal's understanding that, in other words, the Respondent is adopting the argument that the alleged victim must be in an employment relationship.

[157] The Tribunal cannot accept this restrictive interpretation of paragraph 14(1)(c) of the *CHRA*, and it is not necessary to repeat the entire analysis of the expression *en matière d'emploi*, *in matters related to employment*. Under the *CHRA*, it is the act of harassing an individual, in an employment context, that constitutes a discriminatory practice. Furthermore, that individual may also be an employee.

[158] The question rather is whether <u>there is a sufficient nexus to the employment context</u> and not whether there is an employment relationship, strictly speaking (*2553-4330 Québec Inc. v. Duverger*, 2018 FC 377, at paras. 39, 43 and 44; see also *Schrenk*, above, at paras. 3 and 38). As the Supreme Court notes in *Schrenk*, above, at paragraph 31 (see

also *2553-4330 Québec Inc. v. Duverger*, 2018 FC 377, at para. 39), a restrictive approach based on relationships should be rejected in favour of a contextual approach that takes into account the quasi-constitutional nature of human rights statutes that are intended to be preventive and remedial.

(iii) Sufficient nexus to the employment context

[159] In light of the statutory interpretation of paragraph 14(1)(c) of the *CHRA*, to determine whether the act of harassing an individual in matters related to employment constitutes a discriminatory practice, it is necessary to establish whether there is a sufficient nexus between the harassment allegations and the employment context.

[160] After analyzing the evidence filed at the hearing, the Tribunal is fully satisfied that Mr. Duverger's harassment allegations are sufficiently linked to the employment context, for the following reasons.

[161] The Tribunal deems that the ties between Aéropro and Mr. Duverger were not completely severed when Mr. Duverger tendered his resignation on June 21, 2010. Of course, even though their employment relationship ended, a sufficient nexus to an employment context continued to exist between them.

[162] As mentioned earlier, Mr. Duverger was employed at Aéropro between May 2008 and June 2010. The CLP has already ruled that Mr. Duverger sustained an occupational injury while he was employed by the Respondent, partly as a result of the actions of his supervisor, Mr. Dallaire (see *L.D. et Aéropro*, 2013 QCCLP 3939).

[163] The evidence shows that Mr. Dallaire used the address *ymtmeteo@live.ca* to send a series of hostile and vulgar emails to Mr. Duverger. The Tribunal has already found that these emails actually constituted harassment.

[164] The Respondent attempted to file evidence, in the form of a detailed affidavit, sworn and signed by Mr. Dallaire, indicating that these emails had been sent from Mr. Dallaire's personal email address rather than an Aéropro email address.

[165] The Tribunal initially admitted this affidavit into evidence under paragraph 50(3)(c) of the *CHRA*, which stipulates that the member has the power to receive evidence by any means the member sees fit, regardless of whether that evidence would be admissible before a court of law. However, the Tribunal must also give the appropriate weight to evidence, in light of other evidence filed at the hearing.

[166] Unfortunately, neither the Complainant nor the Respondent called Mr. Dallaire to testify at the hearing and consequently, Mr. Dallaire was unable to provide a more detailed explanation about the situation or add to what had been written in the affidavit. Even though the affidavit was detailed, it did not contain a wide range of information that would have given the Tribunal more clarity on the subject. Mr. Dallaire's absence can partly be explained by the fact that Mr. Duverger contacted him at home, via telephone, before the hearing. It is unfortunate that Mr. Duverger did so, because that led Mr. Dallaire to refuse to testify at the hearing. The Respondent declined to call him as a witness and Mr. Duverger did not insist on cross-examining Mr. Dallaire on his sworn affidavit. The Tribunal was deprived of evidence that could have been helpful to it.

[167] Despite the foregoing, the Tribunal remains convinced that Mr. Dallaire sent the emails to Mr. Duverger from an email address that was used in the course of conducting Aéropro activities, at the Chibougamau Airport.

[168] The Tribunal does not believe that it is necessary to have an email address with a domain name that is specifically designated to a company in order to establish that the email address was used in the course of company activities. For example, Richard Légaré had his own email address while he was employed by Aéropro (rlegare@aeropro.qc.ca). This was also true for Aurèle Labbé (alabbe@aeropro.qc.ca) and Pauline Gagnon (pgagnon@aeropro.qc.ca). The evidence to that effect was clear from the testimony provided by Mr. Duverger, Mr. Labbé and Mr. Légaré and from the documentary evidence, most notably the significant number of emails filed by Mr. Duverger at the hearing, which contain these specific email addresses.

[169] However, the email address that Mr. Dallaire used to send the emails on April 23, 24 and 25, and on May 2 and 7 was *ymtmeteo@live.ca*. Mr. Duverger testified that the

letters *YMT* represent the code for the Chibougamau Airport. He explained that that email address was used for different purposes, including to send employee time sheets.

[170] At the hearing, Mr. Duverger filed some emails that had made use of this address. The Tribunal noted that the address was, for example, used in an email dated October 20, 2009, sent to Mr. Légaré to discuss company activities, specifically, the NAV Canada certification and French training sessions.

[171] Another example is the email dated June 16, 2010. The email address *ymtmeteo@live.ca* was once again used to send an email to Mr. Légaré. That email, which was signed by “Raymond” (Mr. Dallaire), discusses Mr. Duverger's work schedule and the fact that Mr. Duverger felt persecuted because of his French origins and believed that there was a conspiracy to force him to quit his job.

[172] Based on this evidence, it is impossible for the Tribunal to conclude that the email address *ymtmeteo@live.ca* was the personal email address of Mr. Dallaire, as indicated in the sworn affidavit.

[173] By all indications, the harassing emails from Mr. Dallaire were sent from an email address that was used in the regular course of Aéropro activities. The evidence also shows that Mr. Dallaire was still employed by the Respondent at the time of the events and under the authority of Mr. Légaré and Mr. Labbé.

[174] The evidence also reveals that Mr. Duverger filed a complaint with the CSST concerning everything he had suffered while employed at Aéropro. It was after this complaint was filed that Mr. Dallaire made the decision to send the harassing emails, in which he mentioned the CSST claim, among other things. It was also because they had both been employed by Aéropro that Mr. Dallaire and Mr. Duverger had a channel, a forum, to communicate, even though they no longer shared an employment relationship.

[175] The CLP finally found that Mr. Duverger had indeed sustained an occupational injury for which he is still receiving compensation. The evidence shows that the Respondent still receives information about the Complainant's situation, including his employment situation, since it receives reports from the CSST. Even though their

employment relationship no longer exists, that relationship, in the context of employment, still exists.

[176] The Tribunal is satisfied that the harassing emails sent by Mr. Dallaire to Mr. Duverger, even though Mr. Duverger was no longer employed by Aéropro, were sufficiently connected to the employment context to trigger the application of paragraph 14(1)(c) of the *CHRA*.

B. Mr. Duverger and his burden regarding his case

[177] The Tribunal will not repeat everything that has been analyzed earlier. It is clear that Mr. Duverger was harassed by Mr. Dallaire in matters related to employment.

[178] The harassing emails from Mr. Dallaire specifically refer to Mr. Duverger's French origins and to a perceived disability. On April 23, 2012, Mr. Dallaire explicitly tells Mr. Duverger to go back to his country because he is nothing a parasite. On April 25, 2012, he tells him that he wants to give him a kick in the butt to send him back to Paris. On May 2, 2012, the email sent to Mr. Duverger does not specifically refer to his French origins but is still quite explicit. By using a style from another time, another era, Mr. Dallaire necessarily refers to Mr. Duverger's French origins. For example, he addresses the email [TRANSLATION] "To his Royal Highness; Laurent the First of his name" and refers to himself as [TRANSLATION] "Raymond Dallaire, simple descendant of a family of farmers since 1640, since New France". He also mentions the fact that Mr. Duverger has the [TRANSLATION] "need to benefit as much as possible from social programs in Quebec and Canada . . .", which is actually a reference to Mr. Duverger's French origins and the fact that he is now in Quebec and Canada.

[179] Finally, any lingering doubt in this regard is removed with Mr. Dallaire's email dated May 7, 2012, when he again tells Mr. Duverger to go back to his country, to his father or mother and that he has no future here, meaning in Quebec and Canada.

[180] The Tribunal finds that the link between the Complainant's national origin and the harassment cannot be any clearer. The Tribunal therefore finds that Mr. Duverger was harassed in matters related to employment on the ground of his national origin.

[181] With respect to disability, the Supreme Court has established as follows, in paragraphs 79 to 81 of *Boisbriand*:

> 79 Thus, a "handicap" may be the result of a physical limitation, an ailment, a social construct, a perceived limitation or a combination of all of these factors. Indeed, it is the combined effect of all these circumstances that determines whether the individual has a "handicap" for the purposes of the *Charter*.
>
> 80 Courts will, therefore, have to consider not only an individual's biomedical condition, but also the circumstances in which a distinction is made. In examining the context in which the impugned act occurred, courts must determine, inter alia, whether an actual or perceived ailment causes the individual to experience "the loss or limitation of opportunities to take part in the life of the community on an equal level with others": McKenna, *supra*, at pp. 163 and 164. The fact remains that a "handicap" also includes persons who have overcome all functional limitations and who are limited in their everyday activities only by the prejudice or stereotypes that are associated with this ground: *British Columbia (Superintendent of Motor Vehicles) v. British Columbia (Council of Human Rights)*, 1999 CanLII 646 (CSC), [1999] 3 S.C.R. 868, at para. 2.
>
> 81 It is important to note that a "handicap" may exist even without proof of physical limitations or the presence of an ailment. The "handicap" may be actual or perceived and, because the emphasis is on the effects of the distinction, exclusion or preference rather than the precise nature of the handicap, the cause and origin of the handicap are immaterial. Further, the *Charter* also prohibits discrimination based on the actual or perceived possibility that an individual may develop a handicap in the future.

[182] This decision was rendered pursuant to article 10 of the Quebec *Charter of Human Rights and Freedoms (*R.S.Q, chapter c-12), which is the counterpart to the *CHRA*. Even though the Quebec *Charter* uses the term *handicap* (rather than *disability*, as in the *CHRA*), the Supreme Court emphasizes as follows at paragraph 46:

> . . . mere differences in terminology do not support a conclusion that there are fundamental differences in the objectives of human rights statutes. In *University of British Columbia v. Berg*, 1993 CanLII 89 (CSC), [1993] 2 S.C.R. 353, at p. 373, Lamer C.J., speaking for the majority, stated the following:
>
> > If human rights legislation is to be interpreted in a purposive manner, differences in wording between provinces should not

> obscure the essentially similar purposes of such provisions, unless the wording clearly evinces a different purpose on behalf of a particular provincial legislature. [Emphasis added]

[183] The *Boisbriand* decision was adopted in this Tribunal's decision in *Desormeaux v. The Corporation of the City of* Ottawa, 2003 CHRT 2, a decision affirmed by the Federal Court of Appeal in 2005 FCA 311 (see also *Temple v. Horizon International Distributors*, 2017 CHRT 30, at para. 39).

In the present case and based on the evidence filed at the hearing, the Tribunal does not believe that Mr. Dallaire knew that Mr. Duverger had in fact received a diagnosis for an adjustment disorder with anxiety and moderate depressed mood. This diagnosis was made by Dr. Cavidy on April 26, 2012. It is important to remember that the email exchange between them took place between April 23 and 25, 2012, and May 2 and 7, 2012. On April 25, 2012, when the emails became more insistent, Mr. Duverger was admitted to the emergency room at the CSSSG in Hull because of symptoms of depression and anxiety, which had been developing for several years. He was then referred to Dr. Cavidy, who made the diagnosis of an adjustment disorder with anxiety and moderate depressed mood, on April 26, 2012.

[184] It would therefore be surprising if Mr. Dallaire was aware of this diagnosis, given that the events took place at the same time.

[185] That said, on May 2, 2012, Mr. Dallaire sent an email in which he wrote that Mr. Duverger should find himself a room in the psychiatric wing of the hospital of his choice, where he would be housed, fed, medicated and treated by a psychiatrist. He added that that would be more advantageous than CSST benefits. Subsequently, on May 7, 2012, Mr. Dallaire again wrote to Mr. Duverger, telling him that he was becoming depressed and had no one to help him.

[186] Furthermore, based on evidence that was filed at the hearing, the Tribunal also had access to certain emails that were exchanged between Mr. Dallaire and his supervisor, Mr. Légaré. Specifically, in an email dated June 16, 2010, Mr. Dallaire wrote a message telling him that Mr. Duverger felt like he was being persecuted because of his French origins, that he believed that there was a conspiracy against him and that he was being

subjected to discrimination. In this same correspondence, Mr. Dallaire indicated that he did not understand Mr. Duverger's reactions, but he was clearly aware that Mr. Duverger was generally feeling unwell.

[187] The Tribunal believes that the evidence supports the theory, based on a balance of probabilities, that Mr. Dallaire was also aware of the complaint that Mr. Duverger had filed with the CSST and of its contents. Why else would he have mentioned it in his harassing email dated May 2, 2012? In his complaint to the CSST, Mr. Duverger described, among other things, the sarcasm, humiliation and suffering he had endured at the hands of Mr. Dallaire and his other colleagues (both administrative judges, Pierre Sincennes and Marie Langlois, mentioned the complaint to the CSST in their respective final decisions. See *L.D. et Aéropro*, 2013 QCCLP 1871, and *L.D. et Aéropro*, 2013 QCCLP 3939). That complaint was filed on March 8, 2012, and on April 23, 2012, Mr. Dallaire started to harass the Complainant and mentioned this claim in his email dated May 2, 2012.

[188] The disability perceived by Mr. Dallaire must be analyzed in its context (see *Boisbriand*, above, at paras. 79 and 80). It is not necessary for Mr. Duverger to actually have a disability that is causing physical limitations or for him to have any other type of illness. Discrimination can be based on disability, even in the absence of actual physical or mental limitations (see *Boisbriand*, above, at para. 81).

[189] Whether or not Mr. Duverger was suffering from an adjustment disorder with anxiety and moderate depressed mood and whether or not it was diagnosed before April 26, 2012, is of little importance.

[190] In this case, what matters is Mr. Dallaire's perception that Mr. Duverger had a mental health problem.

[191] The Tribunal believes that Mr. Dallaire was aware of Mr. Duverger's suffering. It is enough for Mr. Dallaire to have perceived Mr. Duverger as having a mental health problem and that he harassed him based on that perceived disability for the Tribunal to conclude that there is a link between the prohibited ground and the harassment.

[192] The Tribunal is therefore satisfied that Mr. Duverger was harassed in matters related to employment on the ground of his disability.

C. Aéropro's liability

[193] The Tribunal found that Mr. Duverger discharged the burden of proof for his case. That said, the Tribunal now has to analyze the defence presented by Aéropro.

[194] Aéropro presented different pieces of evidence in order to rebut the presumption of liability provided under section 65 of the *CHRA*. Subsection 65(1) of the *CHRA* stipulates that employers are deemed to have committed acts or omissions committed by their employees in the course of their employment. However, an act or omission shall not be deemed to be an act or omission committed by an employer if it is established that the employer did not consent to the commission of the act or omission and exercised all due diligence to prevent the act or omission from being committed and, subsequently, to mitigate or avoid the effect thereof (subsection 65(2) of the *CHRA*).

[195] The Tribunal finds that the Respondent was not able to rebut this presumption and that the Respondent is therefore liable for the acts committed by its employee, Mr. Dallaire.

[196] Subsection 65(1) of the *CHRA* stipulates that employers are deemed to be liable for acts or omissions committed by their employees in the course of their employment. At paragraph 17 of *Robichaud*, above, the Supreme Court established that employers are liable for acts of their employees in the course of employment. The latter expression (in the course of employment) was interpreted in the purposive fashion as "being in some way related or associated with the employment".

[197] Even though the *Robichaud* decision was rendered before the *CHRA* was amended and section 65 was added, the Supreme Court's comments about the liability of the employer generally remain relevant. The Tribunal adopted this analysis again in *Uzoaba v. Canada (Correctional Service)*, T.D. 7/94, April 28, 1994, at page 56, but clarified as follows:

> Thus, under Robichaud, “due diligence” on the part of the employer will not relieve the employer from liability, although it may reduce or eliminate the employer's exposure to damages. In contrast, under the new legislation, due diligence on the part of the employer may allow the employer to escape liability altogether. In both cases, however, the Respondent's conduct will be relevant to the ultimate findings in any given case.

This should be kept in mind when applying section 65 of the *CHRA*.

[198] The Respondent filed a detailed sworn affidavit signed by Mr. Dallaire. In the affidavit, Mr. Dallaire states that Mr. Duverger never complained of harassment while he was employed by Aéropro. For the purposes of this case, this assertion is meaningless because the Tribunal is focused solely on the harassment that took place after Mr. Duverger’s employment. That said, the Tribunal allows itself the following comment: the evidence shows that Mr. Dallaire sent an email to Mr. Légaré on June 16, 2010, to report the tense situation between himself and Mr. Duverger. He wrote to Mr. Légaré and told him that Mr. Duverger felt like he was being persecuted because of his French origins and believed that there was a conspiracy to make him quit his job. He explained that he had tried talking to him calmly and had told him that he did not intend to discriminate against him, which Mr. Duverger did not believe. Even though Mr. Duverger did not use the word harassment, based on his own correspondence with Mr. Dallaire, he was clearly aware that Mr. Duverger had fears and concerns and was suffering at work.

[199] Also in the affidavit, Mr. Dallaire states that the emails sent in 2012 were sent strictly on a personal level and not in his capacity as Mr. Duverger’s former supervisor. As mentioned earlier, the Tribunal must give the appropriate weight to evidence, in light of other evidence filed at the hearing.

[200] First, the Tribunal cannot disregard the fact that this affidavit, even though it was admitted into evidence, appears to be self-serving evidence. Mr. Dallaire is not a party to the hearing, and it is Aéropro, through its counsel, who made him sign the sworn statement. The Tribunal must therefore give the appropriate weight to this evidence, based on the circumstances of this case.

[201] The Tribunal would add that describing Mr. Dallaire's acts as having been committed in either a personal capacity or in his capacity as Mr. Duverger’s former

supervisor is not, in itself, helpful to the Tribunal's analysis, since this is not the issue here. The question instead is whether Mr. Dallaire's actions were in some way related or associated with the employment, and the Tribunal would answer this question in the affirmative.

[202] Based on the balance of probabilities, the evidence does not show that Mr. Duverger and Mr. Dallaire had any type of relationship other than the one developed in the context of their employment. They were not relatives, friends, or partners. Mr. Dallaire was only Mr. Duverger's supervisor and the only relationship that existed between them was that of supervisor/employee, because they were both employed by Aéropro.

[203] Moreover, the harassing emails that Mr. Dallaire sent to Mr. Duverger were sent from the email address ymtmeteo@live.ca. The Tribunal has already found that this email address was used in the course of Aéropro activities, specifically at the Chibougamau Airport.

[204] The Tribunal recalls that it did not accept Mr. Dallaire's claim that the emails were sent from a personal email address. That said, whether or not the emails were sent from a personal address, the question, more importantly, is whether the actions were committed in the course of employment or, in other words, whether they were in some way related or associated with the employment.

[205] Furthermore, these emails specifically refer to the employment relationship between Mr. Duverger and Mr. Dallaire. For example, Mr. Dallaire wrote, on April 23, 2012, [TRANSLATION] "You are the biggest idiot I have had to work with in 25 years . . .". The emails were also sent in reaction to the complaint that Mr. Duverger had filed with the CSST in March 2012. Indeed, Mr. Dallaire mentions the CSST in his email dated May 2, 2012. Lastly, it is important to remember that Mr. Dallaire was still, at the time that these emails were written, an employee of Aéropro.

[206] How can Mr. Dallaire therefore claim that these emails were sent strictly on a personal basis and not in his capacity as Mr. Duverger's former supervisor, when the only relationship that existed between them was that of a former supervisor and a former employee?

[207] The Tribunal cannot subscribe to such a claim and believes that the emails were in some way related or associated with the employment. These are emails that were sent in an employment context, from an email address used in the course of company activities, while Mr. Dallaire was still an employee of Aéropro. Furthermore, it is also clear that the only relationship that existed between Mr. Dallaire and the Complainant was that of a former supervisor and a former employee.

[208] For the purpose of applying subsection 65(2) of the *CHRA*, Aéropro could rebut the presumption of liability if it was able to establish that the act or omission occurred without its consent, that it took all the necessary measures to prevent it and that, subsequently, it attempted to mitigate or avoid the effects thereof.

[209] Based on the evidence filed at the hearing, most notably the evidence provided by Mr. Labbé and Mr. Légaré, the Tribunal is in fact satisfied that Aéropro did not consent to Mr. Dallaire sending the aforementioned harassing emails to Mr. Duverger. Based on the balance of probabilities, Mr. Dallaire sent the emails on his own initiative and the evidence does not support the theory that Mr. Labbé or Mr. Légaré told him to do so. It is not necessary to consider this aspect any further.

[210] With respect to establishing whether Aéropro took all the measures necessary to prevent Mr. Dallaire's actions, the Tribunal must analyze the situation in its entirety in order to determine whether that was the case.

[211] First, the evidence shows that Aéropro has a harassment policy, entitled, [TRANSLATION] "statement on workplace harassment". Mr. Labbé explained to the Tribunal that since Aéropro is subject to federal jurisdiction, it has an obligation, at each station that it operates, to post the *Canada Labour Code*, particularly parts 3 and 4. Aéropro also posted the policies on workplace harassment, sexual harassment and occupational health and safety.

[212] Mr. Labbé added that inspectors from Transport Canada and Environment Canada conducted audits at the various stations once a year. They performed thorough checks, including of whether these different documents were on display.

[213] That said, the one-page workplace harassment policy is relatively short and contains only seven paragraphs. The Tribunal has no intention of reproducing the entire policy here and will only cite the factors that it deems to be important. Having said that, the policy describes harassment in the following manner:

> [TRANSLATION]
>
> . . . improper and offensive conduct by an employee towards another employee in the workplace, including at any event or any location related to work, and that the employee knew or ought reasonably to have known would cause offence or harm. It comprises objectionable act(s), comment(s) or display(s) that demean, belittle, or cause personal humiliation or embarrassment, and any act of intimidation or threat. It also includes harassment within the meaning of the ***Canadian Human Rights Act*** (that is, on the grounds of race, national or ethnic origin, colour, religion, age, sex, sexual orientation, marital status, family status, disability and pardoned conviction).
>
> Harassment is normally a series of incidents but can exceptionally be one severe incident which has a lasting impact on the individual.

[214] It includes an employee's right to enjoy a harassment-free work environment and states that the employer will ensure, to the extent possible, that no employee is harassed. It also states that the employer is committed to taking any disciplinary measures deemed necessary against subordinates who are found guilty of harassing an employee. Finally, it also stipulates that complaints of harassment will be reported to the Human Resources Department (employer representative).

[215] The evidence shows that during the time that Mr. Duverger was still employed by Aéropro, both this policy and the *Canada Labour Code*, were posted in an area accessible to employees. That said, Mr. Légaré could not specifically remember whether this policy was displayed at the Chibougamau Airport. Based on his memory, he believed that there was a bulletin board where different documents, including schedules and the *Canada Labour Code* were posted. According to him, the policy should also have been posted there, but he did not clearly confirm whether it was in fact posted there.

[216] Mr. Légaré confirmed that employees had not received any training explaining the harassment policy. He also indicated that he had not sent any correspondence to

employees explaining the administrative process behind the policy. He could not confirm whether human resources had taken this initiative.

[217] Mr. Légaré and Mr. Labbé also testified that they had not received any harassment complaint from Mr. Duverger. Mr. Labbé in fact asserted that Mr. Duverger had never complained about anything when he was employed by Aéropro.

[218] First, the Tribunal finds it paradoxical that the Respondent relied on the harassment policy when the evidence does not clearly show that this policy was posted at the Chibougamau Airport. Even if it was posted, the preponderance of evidence shows that employees, including supervisors like Mr. Dallaire, did not receive any training on this policy or its application. The Tribunal is even left to wonder whether employees, including Mr. Dallaire, were aware of the existence of such a policy.

[219] Nevertheless, there is conclusive evidence that Mr. Dallaire informed Mr. Légaré of certain allegations that had specifically been made against him by the Complainant. In an email dated June 16, 2010, Mr. Dallaire explained to his supervisor that Mr. Duverger felt persecuted because of his French origins and also believed that Mr. Dallaire was conspiring to make him quit his job. Mr. Dallaire had tried in vain to explain to him that he had no intention of discriminating against him and mentioned to Mr. Légaré that the Complainant had made certain allegations against him and other individuals working at the airport.

[220] What is surprising is that despite the information provided to Mr. Légaré, the Tribunal notes that he did not initiate any procedures or take any proactive action to investigate the situation. The word "harassment" may not have been used by Mr. Dallaire or Mr. Duverger, but the language used in that email, for example, “persecution”, "discriminated" and “conspiracy”, are relatively strong and explicit. Mr. Légaré, who is a senior executive at Aéropro, could have taken action. Mr. Duverger was not directed to contact the Human Resources Department so that he could be supported and, perhaps, be invited to file a complaint.

[221] The Tribunal’s comments are not intended to determine whether there was any harassment or discrimination while Mr. Duverger was employed by Aéropro, because that

does not fall within the scope of the complaint. Rather, they aim to illustrate and shed some light on the attitude adopted by Aéropro in the context of managing some of the important allegations articulated by the Complainant, even though the company was aware that something was going on at the Chibougamau Airport. As the Tribunal mentioned earlier, the situation must be analyzed and understood in its entirety.

[222] That said, Mr. Légaré and Mr. Labbé testified that Mr. Duverger sent them, and several other employees, including Ms. Gagnon, a myriad of emails when his employment ended in June 2010. These emails were sent from various personal email addresses. Based on their testimony, Mr. Duverger held the company and its management responsible for certain accidents and the deaths of passengers, following an airplane crash in the Quebec region in 2010.

[223] During the cross-examination conducted by the Commission, Mr. Légaré was not able to confirm the number of emails he had received from Mr. Duverger after his departure in June 2010. As far as he could remember, he had quickly blocked the different email addresses after receiving the first few emails. Other employees had also complained and he had advised them not to pay attention to Mr. Duverger's emails since he was no longer employed by the company and to block the emails. He recalled having a conversation in this regard with Pauline Gagnon, but he could not confirm whether she had actually followed his recommendations and blocked the emails.

[224] In the same vein, Mr. Labbé also stated that when he became aware of certain emails from the Complainant after his departure, he had asked his assistant, Ms. Gagnon, to delete all incoming emails from the Complainant. He had been categorical: he had asked her to block Mr. Duverger and delete the emails and had told her that he no longer wanted anything to do with Mr. Duverger because there was nothing constructive in any of his messages.

[225] Both Mr. Légaré and Mr. Labbé asserted that they did not see the harassing emails from Mr. Dallaire in April and May 2012. The Tribunal has no reason to question these claims. This appears to be consistent, since Mr. Légaré had blocked emails from Mr. Duverger before that period of time and Mr. Labbé had asked his assistant, Ms.

Gagnon, to delete them. Ms. Gagnon usually reviewed Mr. Labbé's emails early in the morning and could therefore delete emails from the Complainant.

[226] It is therefore difficult, based on the evidence filed at the hearing, to determine the quantity of emails that could have been sent by Mr. Duverger and to confirm the contents of these emails. Moreover, almost all the emails were blocked, or even deleted, according to the Respondent.

[227] That said, even if the Tribunal accepted the theory that at this point, it was Mr. Duverger who was engaging in harassment, due to the contents and the quantity of his emails, the Tribunal finds, based on a preponderance of evidence, that Aéropro did not, despite all this, take measures to prevent the discriminatory practice from occurring and did not take any measures to mitigate or avoid the effects thereof.

[228] First, it is difficult for the Tribunal to determine whether (or not) the Respondent was justified in blocking the Complainant’s emails. However, this raises several questions about the employer’s liability for the acts or omissions of its employees and about its being released from this liability. Can an employer block emails from former employees? If so, when is the employer justified in doing so and under what conditions? Should the employer have resorted to other measures, options or procedures before blocking the emails of the former employee, for example, by filing a police complaint?

[229] The Tribunal is also aware of the incoherence that could lead an employer to systematically block communications from a former employee. Since the employer could not have been made aware of the situation easily, was it not better for the employer to systematically block emails from former employees so that it could reduce its chances of being held liable for the acts or omissions of its employees? The Tribunal believes that this is a question of fact and that it would depend on the specific situation of the case.

[230] What is clear is that the relationship between the parties was and to this day, remains negative, deteriorated and toxic.

[231] Nevertheless, the Tribunal does not need to wonder whether or not Aéropro was justified in blocking Mr. Duverger’s emails. Even though the Tribunal is not questioning the

fact that Mr. Légaré and Mr. Dallaire had no knowledge of the existence of these emails in April and May 2012, the evidence shows that Pauline Gagnon, the human resources manager and assistant to Mr. Labbé, was sent a copy of Mr. Duverger's initial response to Mr. Dallaire, dated April 24, 2012. He was responding to Mr. Dallaire's message dated April 23, 2012, entitled *PARASITE*. Mr. Légaré was also sent a copy of that email but had already blocked emails from the Complainant. The Complainant had used the email address ending in yahoo.ca. Mr. Duverger tried to inform Aéropro of the offensive conduct (*Canada (Human Rights Commission) v. Canada (Armed Forces)*, [1999] 3 FC 653 (T.D.), at page 670).

[232] On Friday, April 27, 2012, Mr. Duverger also sent Mr. Labbé the same email, asking him for his opinion on the message sent by his employee, Mr. Dallaire. He was still using the email address ending in *yahoo.ca*. Mr. Labbé did not see this email since the evidence shows that Ms. Gagnon was reviewing her supervisor's emails and was screening emails from Mr. Duverger.

[233] Even though Mr. Légaré testified that he had recommended that Ms. Gagnon block emails from Mr. Duverger, he could not confirm whether Ms. Gagnon had actually followed his recommendation. On this point, the evidence shows that on July 30, 2013, Mr. Duverger sent an email to Ms. Gagnon, from his email address ending in *yahoo.ca*, in order to ask her whether Aéropro was subject to provincial or federal jurisdiction. Ms. Gagnon replied to this email that same day. That said, it appears that she made a mistake in sending a message to Mr. Légaré to ask him for advice: she did not know how to respond to Mr. Duverger and had no desire to reply to him since she did not know what he would do with her reply. However, this email was instead sent to Mr. Duverger's *yahoo.ca* address and not to Mr. Légaré.

[234] Consequently, despite the fact that this exchange between Ms. Gagnon and Mr. Duverger occurred several months after the events in this case, the preponderance of evidence shows that Ms. Gagnon did not actually block Mr. Duverger's emails. This exchange demonstrates quite the opposite, since she read his email and replied to it, even though the message was intended for Mr. Légaré.

[235] Ms. Gagnon was not called as a witness by Aéropro even though her email address was consistently included in the multitude of emails exchanged between the company and Mr. Duverger. Should the Tribunal draw a negative inference from the Respondent's decision not to call her as a witness? Even if the Tribunal draws a negative inference from the decision not to call Ms. Gagnon as witness, the preponderance of evidence shows that the human resources manager did not block the emails from Mr. Duverger and was forwarded the harassing email from Mr. Dallaire dated April 23, 2012. Ms. Gagnon read Mr. Duverger's email dated July 30, 2013 and therefore, was also able to read Mr. Duverger's email dated April 24, 2012.

[236] Aéropro was therefore made aware of the contents of the harassing email sent by Mr. Dallaire to Mr. Duverger. Ms. Gagnon was the human resources manager and the resource person for the application of the harassment policy. She did not block the Complainant's emails and was therefore able to read them, yet failed to intervene.

[237] The Tribunal would add that Mr. Labbé testified that he became aware of the emails exchanged between Mr. Dallaire and Mr. Duverger in the context of the proceedings before the CSST and the CLP. When he became aware of these exchanges, which he described as childish, he still deemed it necessary to contact Mr. Dallaire to ask him to stop sending the emails, because his actions could cause problems for both Mr. Dallaire and the company.

[238] The evidence does not clearly show the point at which Mr. Labbé became aware of these email exchanges. The CSST complaint was filed on March 8, 2012, whereas the exchanges began on April 23, 2012. It would have been impossible for Mr. Duverger to refer to these emails in his initial complaint since they did not exist at that time. The Tribunal can therefore assume that Mr. Labbé became aware of these exchanges after May 2012.

[239] Besides calling Mr. Dallaire to ask him to stop communicating with Mr. Duverger because it could cause problems, Mr. Labbé did not deem it necessary to take any other measures to mitigate or avoid the effects of such acts committed by his employee.

[240] In short, Mr. Légaré was aware, during the period of employment, of Mr. Duverger's allegations of presumed persecution and discrimination allegedly suffered at the hands of Mr. Légaré's subordinate, Mr. Dallaire. Aéropro did not act diligently.

[241] Ms. Gagnon, who did not block Mr. Duverger's emails, received a copy of the harassing email sent by Mr. Dallaire to Mr. Duverger and yet Aéropro did not take any action.

[242] Mr. Labbé also became aware of emails sent by his employee to the Complainant after the events, and stated that they amounted to childishness. However, he contacted Mr. Dallaire and asked him to stop his actions in that regard, so that he would not cause them any problems. Despite all this, Mr. Labbé did not take any other measures to correct, mitigate or put a stop to the situation. Aéropro did not act diligently.

[243] In brief, the Tribunal finds that Aéropro acted passively by failing to ensure that its work environment was free of harassment.

[244] As such, Aéropro's liability was engaged and the burden therefore shifted to Aéropro to rebut the presumption under subsection 65(1) of the *CHRA*. The Tribunal deems that Aéropro did not exercise all due diligence to prevent, mitigate and eliminate the act and its effects and that Aéropro did not discharge its burden under subsection 65(2) of the *CHRA*.

VII. Damages under subsection 53(2) of the *CHRA*

[245] Now that the Tribunal has found that Mr. Duverger discharged the burden for his case and that Aéropro failed to discharge its own burden to rebut the presumption under section 65 of the *CHRA*, the Tribunal needs to analyze the damages claimed by the Complainant (subsection 53(2) of the *CHRA*).

[246] The Complainant asked the Tribunal

- under paragraph 53(2)(e) and subsection 53(3) of the *CHRA*, to award him the amount of $20,000 for pain and suffering and $20,000 as special compensation for acts committed wilfully or recklessly.

- under paragraphs 53(2)(b) and (c) of the *CHRA*, to award him the amount of $6,730.64 for unauthorized payroll deductions, non-payment of overtime hours, statutory holidays and vacation pay;
- under paragraph 53(2)(c) of the *CHRA*, to award him the amount of $3,000 for expenses; and
- finally, annual interest of 30% on the amount of the damages.

A. Claim for the amount of $6,730.64 under paragraphs 53(2)(b) and (c) of the *CHRA*

[247] Under paragraphs 53(2)(b) and (c) of the *CHRA*, Mr. Duverger is claiming the amount of $6,730.64 for unauthorized payroll deductions, non-payment of overtime hours, statutory holidays and vacation pay.

[248] For the following reasons, the Tribunal rejects this claim.

[249] First, the Tribunal already found, in section V of this decision, that the scope of the complaint does not extend to the allegations concerning the wage discrimination allegedly suffered by Mr. Duverger. The amount of $6,730.34 is related to alleged wage discrimination, analyzed under section 7 of the *CHRA*, and that portion of the complaint was not referred by the Commission. The Tribunal is not a review authority for Commission decisions. It can therefore not analyze such allegations and such damages from the perspective of section 7 of the *CHRA*.

[250] That said, Mr. Duverger still tried to demonstrate to the Tribunal that because of the discrimination he had experienced, he was precluded from filing a complaint under the *Canada Labour Code* within the stipulated deadline. Since the period for filing a complaint was prescribed, he was unable to receive the amount of $6,730.64 for unauthorized payroll deductions, non-payment of overtime hours, statutory holidays and vacation pay.

[251] The Complainant attempted to present arguments concerning the impossibility of acting principle, which, among other things, suspends the limitation period. He also asked the Tribunal not to apply estoppel. He is therefore asking the Tribunal to address this

claim, despite the fact that the decisions in *2553-4330 Québec Inc. c. Laurent Duverger*, EYB 2015-255245, the arbitration award rendered on February 18, 2015 by referee Léonce-E. Roy, *Laurent Duverger v. 2553-4330 Québec Inc.*, 2015 FC 1131, rendered by the Honourable Mr. Justice Michel Beaudry on October 2, 2015, and *Laurent Duverger v. 2553-4330 Québec Inc.*, 2016 FCA 243, rendered by the Honourable Justices Johanne Trudel, Richard Boivin and Yves de Montigny on October 3, 2016, specifically refer to such a claim ($6,730.64) and analyze the impossibility of acting principle.

[252] The Tribunal finds that the arguments concerning the limitation period and estoppel are not helpful because Mr. Duverger's argument is different in the context of this proceeding. At issue is whether, as a result of the discrimination he experienced, he was precluded from filing a complaint under the *Canada Labour Code* within the limitation period.

[253] The complaint before the Tribunal concerns only the post-employment harassment suffered by Mr. Duverger. The Tribunal is not considering any harassment or discrimination that he may have suffered while employed by Aéropro or the other allegations against Aéropro. The harassment suffered by Mr. Duverger is time specific, that is, it took place between April 23 and May 7, 2012.

[254] In order for Mr. Duverger to be compensated under paragraphs 53(2)(b) and (c) of the *CHRA*, the rights, opportunities and benefits he was deprived of as well as any lost wages must have resulted from the discriminatory practice.

[255] In *Chopra v. Canada* (Attorney General), 2007 FCA 268 [Chopra], at para. 32, the Federal Court of Appeal recalled that there must be a causal connection between the discriminatory practice and the losses suffered. The onus is on Mr. Duverger to show this causal connection, based on the balance of probabilities.

[256] Mr. Duverger attempted to prove that Mr. Labbé had asked Mr. Dallaire to write the harassing emails from April and May 2012 in order to ensure that his recourse under the *Canada Labour Code* would be prescribed. As determined by the Tribunal earlier, the evidence does not support these claims.

[257] Mr. Duverger also claimed that he had been afraid to file legal proceedings against Aéropro and Mr. Dallaire, including his claim under the *Canada Labour Code*, because he was going through the immigration process to obtain his Canadian citizenship. He testified about threats by Mr. Dallaire in relation to a letter that he needed to obtain from his employer in order to support his application. He also mentioned his fear of filing claims due to the traumatizing events that had taken place during his employment.

[258] None of these arguments allow the Tribunal to establish that it was the harassing emails sent by Mr. Dallaire that precluded Mr. Duverger from applying for recourse under the *Canada Labour Code*. The Tribunal also notes that despite the harassment he experienced, Mr. Duverger was still able to complete the proceedings related to the claims he filed with the CSST and the CLP. On that point, administrative judge Marie Langlois indicated, at paragraph 14 of her decision (*L.D. et Aéropro*, 2013 QCCLP 3939), that Mr. Duverger :

> [TRANSLATION]
>
> . . . testified with confidence. His testimony was measured and calm, unambiguous, with no exaggerations, reluctance or contradictions. The testimony was persuasive.

[259] Consequently, Mr. Duverger did not satisfy the Tribunal, based on a balance of probabilities, that the rights, opportunities and benefits he was deprived of, such as lost wages, resulted from the discriminatory practice. He was not able to prove to the Tribunal that there was a causal link between the post-employment harassment committed by Mr. Dallaire between April 23 and May 7, 2012 (emails) and his inability to file his claim under the *Canada Labour Code* within the prescribed deadlines.

[260] The Tribunal is dismissing this claim.

B. Claim for the amount of $3,000 under paragraph 53(2)(c) of the *CHRA*

[261] It is important to remember that paragraph 53(2)(c) of the *CHRA* allows the Tribunal to compensate victims of discrimination for any or all of the wages that the victim was deprived of and for any expenses incurred as a result of the discriminatory practice.

[262] At the hearing, the Tribunal asked Mr. Duverger to specify the subsection or paragraph of section 53 of the *CHRA* under which he was claiming this amount. In his statement of particulars, the Complainant had linked a claim of $3,000 to a larger claim of $6,730.64 pursuant to paragraphs 53(2)(b) and (c) of the *CHRA*. The Tribunal therefore asked the Complainant to explain this claim, which is described as a claim in the amount of $3,000 for expenses.

[263] From the outset, Mr. Duverger explained to the Tribunal that he was aware that the Tribunal did not have the jurisdiction to order costs. The Tribunal recalls that that is in fact what the Supreme Court of Canada established in *Canada (Canadian Human Rights Commission) v.* Canada (Attorney General), 2011 SCC 53 [*Mowat*].

[264] While Mr. Duverger tried to justify such a claim, he also hesitated to describe this amount of $3,000 as a claim for pain and suffering, because, by his own admission, he knew that he was already requesting the maximum amount allowed for pain and suffering under paragraph 53(2)(e) of the *CHRA*, which is $20,000.

[265] It was after a break in the hearing and some reflection on his part that Mr. Duverger confirmed that he was claiming that amount under paragraph 53(2)(c) of the *CHRA*.

[266] The Complainant's change of course, hesitations and his own admissions left the Tribunal perplexed about this claim. Furthermore, both the Complainant and the Respondent referred to the decision by the Honourable Mr. Justice Beaudry (*Laurent Duverger v. 2553-4330 Québec Inc.*, 2015 FC 1131), which dismissed Mr. Duverger's application for judicial review and ordered Mr. Duverger to pay Aéropro the amount of $3,000 in costs. The Tribunal notes that it was in the context of these proceedings under the *Canada Labour Code*, that the Complainant had claimed the amount of $6,730.64.

[267] The Tribunal notes that this $3,000 claim is similar or even identical to the order issued by the Honourable Mr. Justice Beaudry, as reflected in the language used in the Complainant's statement of particulars, in the amount claimed as well as in his representations at the hearing.

[268] That said, even if the Tribunal is not satisfied that this amount is for something other than costs, which it cannot order (see *Mowat*, above), Mr. Duverger still bears the onus of demonstrating that this amount constitutes lost wages or expenses incurred as a result of the discriminatory practice, pursuant to paragraph 53(2)(c) of the *CHRA*.

[269] Mr. Duverger did not persuade the Tribunal that the harassment he suffered at the hands of Mr. Dallaire, between April 23 and May 7, 2012, resulted in this loss of $3,000 under paragraph 53(2)(c) of the *CHRA*.

[270] The Tribunal is dismissing this claim.

C. Claims for the amount of $20,000 for pain and suffering and $20,000 in special compensation for reckless or willful practices under paragraph 53(2)(e) and subsection 53(3) of the *CHRA*

[271] The Tribunal believes that this is the core of Mr. Duverger's claim. He is claiming the amount of $20,000 for pain and suffering and $20,000 in special compensation for reckless or wilful acts pursuant to paragraph 53(2)(e) and subsection 53(3) of the *CHRA*. These sections stipulate as follows:

> (2) If at the conclusion of the inquiry the member or panel finds that the complaint is substantiated, the member or panel may, subject to section 54, make an order against the person found to be engaging or to have engaged in the discriminatory practice and include in the order any of the following terms that the member or panel considers appropriate:
>
> . . .
>
> (e) that the person compensate the victim, by an amount not exceeding twenty thousand dollars, for any pain and suffering that the victim experienced as a result of the discriminatory practice.
>
> (3) In addition to any order under subsection (2), the member or panel may order the person to pay such compensation not exceeding twenty thousand dollars to the victim as the member or panel may determine if the member or panel finds that the person is engaging or has engaged in the discriminatory practice wilfully or recklessly.

(i) Pain and suffering

[272] In general, the Tribunal has historically exercised its discretion in the adjudication of damages, to award the maximum amount allowed under the *CHRA* for the most blatant, striking, or even the worst cases of complaints (see among others, *Premakumar v. Air Canada*, T.D. 03/02, April 4, 2002). There must also be a causal link between the loss and the discriminatory practice, as established by the Federal Court of Appeal in *Chopra*, above, at para. 32.

[273] In Mr. Duverger's case, the Tribunal believes that further to the discriminatory practice engaged in by the Respondent, he has the right to obtain compensation for pain and suffering.

[274] The Tribunal has already determined that the scope of this complaint is limited to the post-employment harassment experienced by Mr. Duverger. It is therefore impossible to compensate him for the allegations, events or acts that he experienced or may have experienced when he was employed by Aéropro. Moreover, the Tribunal notes that Mr. Duverger is currently being compensated for an occupational injury of a psychological nature, which he sustained while he was employed by the Respondent (see the decision rendered by administrative judge Marie Langlois, in *L.D. et Aéropro*, 2013 QCCLP 3939). That is why the Tribunal believes that the context surrounding this complaint is still relevant in the present case.

[275] The Tribunal must determine the pain and suffering endured by the Complainant as a result of the post-employment harassment.

[276] It is clear to the Tribunal that Mr. Duverger was affected by Mr. Dallaire's harassment. Further to receiving some emails from his former supervisor between April 23 and 25, 2012, Mr. Duverger had to go to the emergency room of the CSSSG in Hull in order to receive the requisite medical care for his condition on April 25, 2012. He was then quickly referred to a psychiatrist, Dr. Cavidy, because of symptoms of anxiety and depression that had been developing for several years. The Tribunal was able to obtain the report prepared by the psychiatrist following the consultation on April 26, 2012.

[277] In his report, Dr. Cavidy wrote that [TRANSLATION] “Mr. Duverger referred to a traumatic work experience he had in Chibougamau”. The psychiatrist noted that the patient was anxious and that he would cry from time to time for no specific reason. The Complainant had issues with self-confidence, isolated himself and lacked interests.

[278] The same report indicated that Mr. Duverger hoped to be recognized as having a disability and to be able to receive benefits from the CSST [TRANSLATION] “so that the boss who tortured me will be punished, so that there will be official recognition that I was a victim of discrimination and humiliation”.

[279] It is important to remember that Mr. Duverger had already filed his complaint with the CSST on March 8, 2012. Mr. Dallaire’s emails were sent after Mr. Duverger had filed his complaint. When Mr. Duverger received these emails, he decided to seek professional help and obtain assistance. It was at that time that Dr. Cavidy diagnosed him with an adjustment disorder with depressed mood. It should be added that he was also diagnosed with post-traumatic stress by Dr. Séguin on May 28, 2013.

[280] Even though the CLP deemed these two diagnoses to be occupational injuries sustained as a result of a work-related injury (*L.D. et Aéropro*, 2013 QCCLP 3939), the CLP never addressed the question of whether the emails received by Mr. Duverger, between April 23 and May 7, 2012, constituted a discriminatory practice within the meaning of the *CHRA*; consequently, the CLP did not award any compensation for this discriminatory practice. The CLP only addressed the question of the occupational injury, i.e., it had to determine whether Mr. Duverger’s experiences while he was employed by Aéropro amounted to an occupational injury as a result of a work-related injury.

[281] The Tribunal finds that Mr. Dallaire’s harassing emails are one factor, among others, that led to the pain and suffering endured by Mr. Duverger. When Mr. Duverger consulted Dr. Cavidy, his complaint with the CSST had already been filed. It was because of the emails from Mr. Dallaire, between May 23 and 25, 2012, that Mr. Duverger went to see a psychiatrist.

[282] It is this factor that, in the Tribunal's view, was the straw that broke the camel's back for the Complainant. Even though the Complainant spoke to the psychiatrist about his claim with the CSST and also requested a copy of the report for his case, the Tribunal believes that this stands to reason because he had filed his complaint on March 8, 2012. The Complainant had not yet endeavoured to seek any other remedy, not even this complaint under the *CHRA*.

[283] It is surprising that the Respondent claims that there is no prejudice related to Mr. Dallaire's emails and that any prejudice is solely related to the events that took place during Mr. Duverger's employment. The evidence reveals that it was because of the emails that Mr. Duverger went to the hospital and received his diagnoses. It is impossible to predict what would have happened if the emails had not been sent, but suffice it to say that Mr. Dallaire's emails pushed Mr. Duverger to see a psychiatrist for treatment. The Tribunal also noted at the hearing that Mr. Duverger still appeared to be badly affected by the contents of the emails.

[284] Indeed, even though he kept his composure during most of the hearing, he sometimes seemed disoriented and affected by the proceedings. When he read the emails from Mr. Dallaire, the Complainant was unable to hold back his tears; he was affected, the words still hurt, there were many tears. Clearly, the impact of the emails was still being felt on the dates of the hearing.

[285] That said, I share the opinion of member Matthew D. Garfield, who wrote as follows in the decision he rendered in *Cassidy v. Canada Post Corporation and Raj Thambirajah*, 2012 CHRT 29, at paragraph 192:

> The goal of the CHRA and other anti-discrimination human rights statutes is to "make a complainant whole", to put that person in a position s/he would have been in "but for the discrimination" the complainant suffered. The CHRA is a remedial statute. Its goal is to compensate, not punish a respondent. <u>That said, aggravating (as opposed to punitive) and mitigating factors are relevant to the award of compensation.</u> The remedy must be reasonable and have a nexus or causal link to the discriminatory practice found to have occurred.
>
> [Emphasis added]

[286] In the present case, the Tribunal believes that some mitigating factors must be taken into consideration in the award of damages for pain and suffering.

[287] It should be noted that when he testified at the hearing, the Complainant admitted a number of times that he had attempted to record, sometimes without their knowledge, various individuals, including the Commission investigator, Mr. Harpin, and former colleagues, such as Yves Thibault and Mr. Dallaire. Under cross-examination, he explained that he had wanted the recordings in order to protect and defend himself, but had also wanted to use them for proceedings before various legal authorities. When the Respondent asked him whether his life revolved around the idea of preparing legal cases against Aéropro, Mr. Duverger answered, frankly, in the affirmative. He stated that he would be able to move on when justice had been served.

[288] Also in connection with the harassing emails exchanged between April 23 and May 7, 2012, Mr. Duverger testified, under cross-examination, that when he received the first email from Mr. Dallaire, he had wanted Mr. Dallaire to give him more information, to provide more details, knowing that he was going to use Mr. Dallaire's emails in the context of proceedings before a Tribunal. He said that he had wanted Mr. Dallaire to be more explicit, in writing, so that the Tribunal would understand the nature of the threats he had faced.

[289] The Tribunal cannot ignore Mr. Duverger's reckless, cavalier and provocative attitude, which is supported by the evidence. Even though the Tribunal has already determined that his attitude had no impact on the fact he was discriminated against, it is relevant in the context of an award for pain and suffering damages.

[290] Despite Mr. Duverger's attitude, we still cannot say that he asked Mr. Dallaire to send him the first harassing email on April 23, 2012. It must also be said that Mr. Duverger had no control over the type of emails Mr. Dallaire could send, even if he wanted Mr. Dallaire to be more explicit, so he could use them against Mr. Dallaire and Aéropro. This does not obviate the discriminatory nature of Mr. Dallaire's acts.

[291] That said, there must be a causal link between the discriminatory practices and the damages sought. In this case, Mr. Duverger participated, to some extent, in the email

exchange with Mr. Dallaire, and admitted that he was trying to get more explicit threats so that he could use them before the Tribunal. Based on this evidence, the Tribunal cannot conclude that all of the pain and suffering endured by Mr. Duverger can be attributed to the discriminatory practice engaged in by Mr. Dallaire.

[292] Considering Mr. Duverger's participation in the email exchange and his clearly provocative intentions, and while this in no way obviates the discriminatory nature of the emails sent by Mr. Dallaire, the Tribunal is hereby granting Mr. Duverger the amount of $8,000 for pain and suffering.

(ii) Special compensation

[293] In the decision rendered in *First Nations Child & Family Caring Society of Canada et al. v. Attorney General of Canada (for the Minister of Indian and Northern Affairs Canada)*, 2015 CHRT 14 [*Family Caring Society*], at paragraph 21, members Sophie Marchildon, Réjean Bélanger and Edwards P. Lustig addressed the special compensation provided under subsection 53(3) of the *CHRA*:

> The Federal Court has interpreted this section as being a ". . .punitive provision intended to provide a deterrent and discourage those who deliberately discriminate" (*Canada (Attorney General) v. Johnstone*, 2013 FC 113, at para. 155, aff'd 2014 FCA 110 [Johnstone FC]). A finding of wilfulness requires ". . .the discriminatory act and the infringement of the person's rights under the Act is intentional" (Johnstone FC, at para. 155). Recklessness involves ". . .acts that disregard or show indifference for the consequences such that the conduct is done wantonly or heedlessly" (*Johnstone* FC, at para. 155).

[294] The Respondent argued that under subsection 53(3) of the *CHRA*, it is the person who engaged in the discriminatory practice who must pay the special compensation. Since the provision uses the expression « auteur d'un acte discriminatoire » [person is engaging or has engaged in the discriminatory practice] and not « personne trouvée coupable d'un acte discriminatoire » [person found to be engaging or to have engaged in the discriminatory practice], as provided in subsection 52(2) of the *CHRA*, the Respondent argued that the intention of Parliament must necessarily have been different. That said, Aéropro explained that since it was Mr. Dallaire who engaged in the discriminatory

practice, Aéropro was not the person who engaged in the practice and should not be held liable for paying special compensation to Mr. Duverger.

[295] The Tribunal does not find this argument compelling, but rather surprising. As the Tribunal noted earlier, the terms of a statute should be read in their entire context and in their ordinary and grammatical sense, harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament (See E.A. Driedger, *Construction of Statutes* (2nd edition, 1983), p. 87, adopted by the Supreme Court of Canada in *Rizzo & Rizzo Shoes Ltd. (Re)* [1998] 1 S.C.R. 27 [*Rizzo*], at para. 21).

[296] If the Tribunal accepts the interpretation presented by the Respondent, it would mean that employers would only rarely be held liable for paying special compensation under subsection 53(3) of the *CHRA*, since the employer would not, in fact, be the person engaging in the discriminatory practice, the employee being the actual person who engaged in this practice.

[297] This interpretation is rigid and restrictive whereas human rights statutes must be given a broad and liberal interpretation. According to the Tribunal, this interpretation goes completely against the scheme and object of the *CHRA*, particularly the presumption under section 65 of the *CHRA*. It is important to remember that subsection 65(1) of the *CHRA* stipulates that the employer is deemed to have committed the acts or omissions committed by its employee. A person who is deemed to have committed certain acts is, in other words, deemed to be the perpetrator of the acts in question. Moreover, in the present case, the Tribunal has already determined that Aéropro did not succeed in rebutting the presumption in section 65 of the *CHRA*, which means that Aéropro must be held liable for the acts committed by Mr. Dallaire. In this context, therefore, it is also Aéropro's responsibility to pay the special compensation.

[298] In addition to this evidence, the Tribunal notes that the Respondent failed to consult the English version of subsections 53(2) and (3) of the *CHRA*, which, according to the Tribunal, removes any possible doubt.

[299] In the English version, subsection 53(2) of the *CHRA* is worded as follows: "the person found to be engaging or to have engaged in the discriminatory practice". In

subsection 53(3) of the *CHRA*, the following wording is used: “the person is engaging or has engaged in the discriminatory practice”. The same expressions are clearly used in both subsections.

[300] When interpreting a bilingual statute, the Supreme Court has reminded us that where one version is ambiguous and the other is clear and unequivocal, the common meaning of the two versions should be preferred (see *Schreiber v. Canada (Attorney General)*, [2002] 3 S.C.R. 269, 2002 SCC 62 (CanLII), interpretation also adopted in *R v. Daoust*, [2004] 1 SCR 217, at paras. 26 and 27).

[301] For the Tribunal, the common meaning is clear: if it finds that the complaint is substantiated, the Tribunal may order the person found to have engaged in a discriminatory practice, in other words, the person who engaged in the discriminatory practice, to rectify the situation. The possible orders are provided under subsections 53(2) and (3) of the *CHRA*. Based on the presumption set out in section 65 of the *CHRA*, an employer is therefore deemed to be the person who committed the act or omission committed by its employee in the course of employment.

[302] That said, the Tribunal must now determine whether Mr. Dallaire’s conduct was reckless or wilful, within the meaning of subsection 53(3) of the *CHRA*.

[303] The Tribunal can only conclude that Mr. Dallaire wilfully and recklessly sent the emails to Mr. Duverger. Based on the balance of probabilities, the Tribunal subscribes to the theory that it is Mr. Dallaire who sent the first email on April 23, 2012, which was a discriminatory email. The emails are vulgar, hurtful and vicious. Even though, to some extent, Mr. Duverger replied to Mr. Dallaire to obtain more details in writing from him, the fact remains that Mr. Dallaire continued to write harassing emails. The emails that followed continued to be based on prohibited grounds under the *CHRA*, such as national origin and disability. Mr. Dallaire’s desire to discredit Mr. Duverger and diminish him, in terms of these aspects, was reflected in this series of emails, written between April 23 and May 7, 2012. It is the Tribunal’s view that the intention is clear and reprehensible and must be discouraged in the future. Moreover, the emails from Mr. Dallaire were persistent and he obviously did not consider the power of his words. Consequently, his conduct also

demonstrated contempt and indifference for the impact that his acts could have on Mr. Duverger, which constitutes a reckless act within the meaning of subsection 53(3) of the *CHRA*.

[304] It is important to remember that the objective of section 53(3) of the *CHRA* is deterrence, discouragement and consequently, prevention (see *Canada (Attorney General) v. Johnstone*, 2013 FC 113 (CanLII), at paragraph 155, affirmed 2014 FCA 110 (CanLII). I find that when the Tribunal awards special compensation under subsection 53(3) of the *CHRA*, it must award what is necessary in order to achieve the objectives of deterrence, discouragement and prevention.

[305] The Tribunal is well aware that human rights statutes, including the *CHRA*, are not punitive; they are instead intended to be remedial and preventive (see *Schrenk*, above, at para. 31). Indeed, the deterrent nature of subsection 53(3) of the *CHRA* and its discouraging effects on those who engage or would like to engage in discriminatory practices in a reckless or willful manner are consistent with the preventive objective of the *CHRA*.

[306] While the Tribunal has determined that Mr. Dallaire acted in a willful and reckless manner, it must now determine the amount that must be imposed on Aéropro as special compensation.

[307] I find that the Tribunal has broad discretion when assessing the special compensation necessary under subsection 53(3) of the *CHRA* to achieve the objectives of deterrence, discouragement and prevention. Therefore, it can take several factors into consideration that may differ based on the circumstances of each case. For example, the Tribunal may consider the gravity and the nature of the act, which has traditionally been a preferred approach. It may also take into account the financial situation of the party required to pay special compensation. The Tribunal may also consider other compensation previously awarded to the victim in the context of other proceedings, if such compensation was also awarded to achieve the objectives of deterrence, discouragement and prevention. This list is not exhaustive. It is also important to understand that what serves as a deterrent for one person may not necessarily be the same for another.

[308] It is important to remember that the preventive function of the *CHRA* requires, among other things, that the Tribunal send a clear message indicating that it is undesirable for discriminatory conduct to be repeated, both for the perpetrator of the act and for society in general. Therefore, when a trier of facts highlights, through special compensation, that the willful or reckless discriminatory practice engaged in by a respondent party is particularly deplorable, it helps maintain the effectiveness of the preventive role of the *CHRA*.

[309] In this case, Aéropro is a company that began its operational activities in early 1988 and which had roughly one hundred employees at the hearing dates. It is therefore a well-established SME with over thirty years of experience. The Tribunal must take these facts into account when awarding special compensation in order to ensure that it will have the deterrent effect sought. Considering the nature of the act committed as well as the willfulness and recklessness of the act committed by Mr. Dallaire, the Tribunal is ordering a payment in the amount of $12,000.

D. Interest

[310] Mr. Duverger has asked the Tribunal to apply interest to the amounts claimed. According to him, the interest must be high enough to have a deterrent effect for the Respondent.

[311] He explained that his credit card has an annual interest rate of 19.75% and that cash advances are based on an annual rate of 21.99%. He added that Mr. Labbé, the chief executive officer of Aéropro, was complacent and that the *Canada Labour Code* did not have any rules with deterrent effects.

[312] He therefore requested the application of an annual interest rate of 30%.

[313] First, the Tribunal may award interest on compensation under subsection 53(4) of the *CHRA*.

> Subject to the rules made under section 48.9, an order to pay compensation under this section may include an award of interest at a rate and for a period that the member or panel considers appropriate.

[314] Based on subsection 48.9(2) of the *CHRA*, the Tribunal decided to resort to the rules of procedure for the purpose of awarding interest. It is rule 9(12) of the *Rules* that indicates how interest is to be calculated.

[315] For this purpose, rule 9(12) of the *Rules* stipulates that:

> Unless the Panel orders otherwise, any award of interest under s. 53(4) of the *Canadian Human Rights Act*,
>
> a. shall be simple interest calculated on a yearly basis at the Bank Rate (monthly series) established by the Bank of Canada; and
>
> b. shall accrue from the date on which the discriminatory practice occurred, until the date of payment of the award of compensation.

[316] In my opinion, the burden of convincing the Tribunal that rule 9(1) of the *Rules* should not be applied and that another interest rate or mode of calculation should be used lies on the party making such an argument.

[317] First, the Tribunal notes that deterrence is not the objective of paying interest, to echo the words of Mr. Duverger. Instead, it is special compensation, provided under subsection 53(3) of the *CHRA*, that has a deterrent effect (see *Family Caring Society* and *Johnstone FC*, above).

[318] The Tribunal is of the view that interest on compensation has the objective of, among other things, preventing the person found to have engaged in a discriminatory practice from benefiting from deadlines triggered by the quasi-judicial process and especially, to fairly compensate the victim of the discriminatory practice for the prejudice he or she has suffered and consequently, for the delay in being compensated.

[319] The Complainant is relying on annual interest rates charged on a credit card or cash advances, together with this deterrent effect, to justify an annual interest rate of 30%. This approach to establishing the applicable interest rate does not take into account the specific terms and conditions of credit contracts and cash advances, which, in my opinion, have nothing to do with the objective of awarding interest in a quasi-judicial context such as ours.

[320] Mr. Duverger's proposed method of establishing the interest rate is random and unreasonable; it does not respect the spirit of section 53(4) of the *CHRA* or the objective sought in awarding interest on compensation. Member Perreault made the same comments in her recent decision in *O'Bomsawin v. Abenakis of Odanak Council*, 2018 CHRT 25, at paragraph 20.

[321] Mr. Duverger bore the burden of persuading the Tribunal that it should deviate from the usual rule for calculating interest on compensation awarded under the *CHRA*, which he was unable to do.

[322] For these reasons, the Tribunal will apply subsection 53(4) of the *CHRA* and rule 9(12) of the Rules, whereby interest shall be simple interest calculated on a yearly basis at the Bank Rate (monthly series) established by the Bank of Canada. This interest shall be calculated as of April 23, 2012, the date on which the discriminatory practice began, until the date of payment of the compensation.

VIII. Decision

[323] For these reasons, the Tribunal is awarding Mr. Duverger the amount of $8,000 under paragraph 53(2)(e) and $12,000 under subsection 53(3) of the *CHRA*.

[324] The interest shall be simple interest calculated on a yearly basis at the Bank Rate established by the Bank of Canada (monthly series), calculated as of April 23, 2012, until the date of payment of the compensation.

Signed by

Gabriel Gaudreault
Tribunal Member

Ottawa, Ontario
April 25, 2019

Canadian Human Rights Tribunal

Parties of Record

Tribunal File: T2230/5217

Style of Cause: Laurent Duverger v. 2553-4330 Québec Inc. (Aéropro)

Decision of the Tribunal Dated: April 25, 2019

Date and Place of Hearing: October 2 to 5, 2018

Ottawa, Ontario

Appearances:

Laurent Duverger, for himself

Daniel Poulin, for the Canadian Human Rights Commission

Steven Côté, for the Respondent