

**Canadian Human
Rights Tribunal**



**Tribunal canadien
des droits de la personne**

Citation: 2020 CHRT 6

Date: April 6, 2020

File No.: T2342/0119

Between:

Amahbel Dulce-Crowchild

Complainant

- and -

Canadian Human Rights Commission

Commission

- and -

Tsuut'ina Nation

Respondent

Decision

Member: Colleen Harrington

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I. Overview

[1] Amahbel Dulce-Crowchild (the “Complainant”) is originally from the Philippines. Her husband and children are members of the Respondent Tsuut’ina Nation, where the Complainant has lived since 2009. The Tsuut’ina Nation is located adjacent to the City of Calgary.

[2] The Complainant has worked as a Health Care Aide (“HCA”), mainly in Calgary, since she arrived in Canada in 2007. In early June of 2016, the Complainant accepted a job as a HCA for an elder in the Respondent community, whom I will refer to in this decision as “the Elder”. The Respondent terminated the Complainant’s employment in November of 2016 following a call from the Elder, who said she did not want the Complainant working as her HCA any more, as she did not want trouble in her home. The Elder’s decision followed an interaction between her grandson (the “grandson”) and members of the Complainant’s family.

[3] The Complainant says she had a strong relationship with the Elder and did not do anything wrong, and feels that her termination was unfair. She believes that her termination was related in some way to her race or national or ethnic origin, and therefore amounts to discrimination under the *Canadian Human Rights Act*¹ (the “Act” or “CHRA”). She alleges that, because she is not from the Tsuut’ina Nation and is not an Indigenous person, the Respondent simply believed the grandson’s version of events, without conducting an investigation.

[4] The Respondent denies that the termination was discriminatory. It does not dispute that the Complainant had a good relationship with the Elder, but says that she was clearly told at the outset of her employment that, if the Elder decided she no longer wanted the Complainant to work for her, that would be the end of her employment with the Elder. The Respondent says that the Complainant’s race or national or ethnic origin did not factor into the decision to terminate her employment as the Elder’s HCA.

¹ RSC 1985, c H-6.

[5] For the reasons that follow, I find that the Complainant has not proven that she was discriminated against, and therefore dismiss the complaint.

II. Issue

[6] The issue in this case is whether the Respondent discriminated against the Complainant on the basis of her race, colour, national origin or ethnic origin, each of which is a prohibited ground of discrimination under the *CHRA*. To succeed in her complaint, the Complainant must prove that at least one of these prohibited grounds of discrimination was a factor in the Respondent's decision to terminate her employment.

III. Analysis

Legal Framework

[7] Section 7 of the *CHRA* states that it is a discriminatory practice to refuse to employ or continue to employ any individual on a prohibited ground of discrimination.

[8] In order to establish that her termination was discriminatory, the Complainant must prove the following three elements on a balance of probabilities:

- (1) She has one or more characteristics protected from discrimination under section 3 of the *CHRA*;
- (2) She was terminated from her employment contrary to subsection 7(a) of the *CHRA*; and
- (3) A protected characteristic was a factor in the termination of her employment.²

[9] In order to prove the third element, the Complainant must show that there is a connection between the first two elements. The protected characteristic need not be the only factor in the termination of her employment, and a causal connection is not required.³

² *Moore v. British Columbia (Education)*, 2012 SCC 61 at para. 33; *First Nations Child and Family Caring Society of Canada et al. v. Attorney General of Canada (for the Minister of Indian and Northern Affairs Canada)*, 2016 CHRT 2 [“*FNCFCSC*”] at para. 22.

[10] In determining whether discrimination has occurred, the Tribunal may consider the evidence of all parties. A respondent can present evidence to refute an allegation of *prima facie* discrimination, put forward a defence justifying the discrimination under section 15 of the *Act*, or do both.⁴

[11] In this case, the Respondent has presented evidence to explain the termination so as to negate the alleged connection between the protected characteristics and the termination of employment. Where a respondent refutes the allegation of discrimination, this explanation must be reasonable, it cannot be a “pretext” - or an excuse - to conceal discrimination.⁵

[12] It is in the context of this legal framework that I must address the evidence presented at the hearing.

1. The Complainant qualifies for protection from discrimination on the basis of one or more prohibited grounds of discrimination under the CHRA

[13] In her human rights complaint, filed with the Commission on May 20, 2017, the Complainant alleged that the Respondent discriminated against her on the basis of her race, colour, and national or ethnic origin. These are all prohibited grounds of discrimination as set out in subsection 3(1) of the *CHRA*.

[14] The Complainant is originally from the Philippines and is married to a member of the Tsuut’ina Nation. She is not alleging that she was terminated or treated unfavourably because she is from the Philippines, but rather because she is not a member of the Tsuut’ina Nation. She feels that she is viewed as an “outsider” as she does not share a common race, ethnic origin or national origin with members of the Respondent Nation.

³ *FNCFCSC, ibid* at para. 25.

⁴ *Québec (Commission des droits de la personne et des droits de la jeunesse) v. Bombardier Inc. (Bombardier Aerospace Training Center)*, 2015 SCC 39 [“*Bombardier*”] at paras. 64, 67, 81; *Emmett v. Canada Revenue Agency*, 2018 CHRT 23 at paras. 61, 63-67.

⁵ *Moffat v. Davey Cartage Co.(1973) Ltd.*, 2015 CHRT 5 at para. 38.

[15] In her closing submissions, the Complainant refers to race and ethnic origin as being the protected characteristics of relevance to her as an immigrant of Filipino descent living and working in the Tsuut'ina Nation.

[16] The *CHRA* does not define "race". The Ontario Human Rights Commission has published a fact sheet on "Racial discrimination, race and racism" which states:

"Race" is a prohibited ground of discrimination in the Ontario *Human Rights Code* (the "*Code*"), but like racial discrimination, it is not specifically defined. The Commission has explained "race" as socially constructed differences among people based on characteristics such as accent or manner of speech, name, clothing, diet, beliefs and practices, leisure preferences, places of origin and so forth. The process of social construction of race is called racialization: "the process by which societies construct races as real, different and unequal in ways that matter to economic, political and social life."

[17] I accept that, as an immigrant from the Philippines and a non-member of the Respondent Nation, she qualifies for protection under the *CHRA* on the basis of her race, national origin and ethnic origin.

[18] The Complainant did not provide an explanation as to why she also filed her complaint on the basis of "colour" under the *Act*, nor did she advance this as a protected ground in her submissions. As such, I will not consider discrimination on the basis of colour in this decision, and dismiss the complaint on that ground.

2. The Complainant's employment was terminated by the Respondent

[19] The Respondent acknowledges that it terminated the Complainant's employment as the HCA for the Elder on November 7, 2016.

3. There is no connection between the decision to terminate her employment and a prohibited ground of discrimination under the Act

IV. Evidence

[20] This is a summary of the evidence provided at the hearing that is relevant to the positions of the parties and the issue I must decide. Findings of fact, to the extent that they are necessary, are made in the “Decision” section below.

[21] Although the Complainant lives in the Tsuut’ina Nation and her husband and children are members of the Nation, she testified that she feels like an outsider in the community. She said she does not feel welcome because of looks she has received from community members, which she described as, “not real welcoming, kind of head to toe”. On one occasion she tried to attend what she thought was an open community meeting with her husband, but was told that she could not attend because she is not a member of the Nation, which made her feel unwelcome. She also did not receive a warm reception when taking her step daughter to horse riding lessons in the community. She testified that she does not attend community gatherings because, “it’s not a good environment to be in so I’d rather stay away”.

[22] In spite of this, the Complainant testified that she wanted to work in the community because she lives there and she wanted the opportunity to serve the community of her husband and children. She thought that working there would help people get to know her better.

[23] According to the Respondent’s Statement of Particulars, the Health Department is an internal department of the Tsuut’ina Nation that provides health services to its members. The Health Department operates the Health Centre and also provides home care services to members of the Nation who reside in the community. Home care services are delivered mainly by Health Care Aides.

[24] In early 2016, the Complainant’s husband approached the Respondent’s Health Director, Ms. Crowchild, to whom he is related by marriage, to inquire about employment for his wife. He brought along a copy of the Complainant’s résumé. Ms. Crowchild advised

him that there were not currently any HCA positions available, and that hiring for full-time employment with the Health Centre was done through the Respondent's human resources department. However, she kept the Complainant's résumé on file.

[25] When a casual position as HCA for the Elder came up in June of 2016, Ms. Crowchild asked the Homecare Nurse Coordinator Ms. Grosariu if they could offer the job to the Complainant in order to help her obtain employment in the community. Proceeding in this fashion was not consistent with the Health Centre's normal process of providing HCAs for elders in the community. While full-time positions with the Health Centre were staffed through the Respondent's human resources department, casual labour positions were staffed by homecare nursing agencies with whom the Health Centre contracted. These outside agencies, and not the Health Centre, selected the HCAs to work with particular community members requiring in-home care.

[26] Ms. Grosariu testified that, when one of the contracted homecare agencies is informed that an elder does not want a particular caregiver anymore, the agency provides them with a different HCA. She said that the agencies try hard to find a caregiver who is a good fit, and that they can end up bringing several caregivers before an elder chooses one they are comfortable with. She said the agencies hire caregivers from all over, including members of the Tsuut'ina Nation.

[27] The Tribunal heard that, in early June of 2016, the Elder was just starting to receive homecare, and determined after one day with an agency-provided HCA that she was not comfortable with that person. As she had felt somewhat pressured by the Complainant's husband to find work for the Complainant, Ms. Crowchild decided to do the Complainant a favour by offering her the job with the Elder, rather than using the agency again.

[28] The Respondent's view was that the Elder was basically the Complainant's employer. If the Elder decided she no longer wanted the Complainant as her HCA, or if the Elder went into the hospital, the Complainant's job would end. The Health Director, Ms. Crowchild, testified that a HCA's employment was contingent on them having a good working relationship with their client. The Complainant testified that she was aware of this when she accepted the job.

[29] The Complainant testified that, as she was her family's main breadwinner and was also supporting family in the Philippines, she expressed her concern during her informal job interview about what would happen if her job with the Elder ended. She said that Ms. Crowchild and Ms. Grosariu told her there are many elders who need care in the community, so there should be other work for her. The Complainant says she took this as a guarantee of further work in the event that her employment with the Elder ended. On this basis, and because she was receiving full-time hours working for the Elder, she decided to quit her full-time job in Calgary. She did this despite being told by Ms. Skaret, who is employed by the Respondent as a homecare registered nurse, that she was taking a risk in doing so.

[30] Ms. Skaret, who was responsible for the Elder's care, testified that she was very concerned that the Complainant was giving up a full-time position in Calgary to take a casual position in the community. She told the Complainant that the Elder's last HCA had lasted only one day, and that there was no guarantee of further work with the Respondent. The Complainant agreed that Ms. Skaret told her this, but said she chose not to listen to her. She testified that, because Ms. Skaret was not her supervisor, she decided to rely instead on what she felt was a guarantee of further employment, provided by Ms. Grosariu and Ms. Crowchild. Neither of these witnesses testified that they provided the Complainant with a guarantee of work if her position with the Elder ended. They testified that they told her that, as a casual employee, she would have no benefits or vacation days, and that her employment was contingent on the Elder wanting her as her HCA.

[31] The Complainant testified that she did not know the Elder or her grandson prior to working for her. She said that she got along well with the Elder, that she had no problems with her, and that they treated one another with respect. This is not disputed. The Complainant also testified that she had no issues with the grandson while she was working for the Elder, except that he once asked her to cook for him and she declined because that was not part of her job. The grandson denied that he had ever asked her to cook for him. The Complainant also testified that, on one occasion when she was working at the Elder's home, the grandson was upset about something and was swearing. She

said he was not upset with her, but that the Elder asked her to leave and she did. The grandson testified that he did not recall this incident.

[32] According to the Complainant, on Friday, November 4, 2016, two of her husband's sisters were dropping her off for work at the Elder's home. She said the grandson was standing outside of the home and one of her sisters-in-law, Bernadine, said to him in a nice way, "Can you be nice to my sister-in-law?" When asked why she thought her sister-in-law said that to the grandson, the Complainant testified that Bernadine had known the grandson for a long time. She said the grandson was well known in the community as having a drinking problem and addiction issues, although she herself knew nothing about him or his history. The Tribunal did not hear from Bernadine as, sadly, she has passed away. The Complainant did not call her other sister-in-law as a witness, although she was also in the car at the time the comment was made to the grandson.

[33] The Complainant testified that, after her sisters-in-law dropped her off and drove away, the grandson asked the Complainant if she wanted trouble and she answered "no", and then he left. The Complainant worked that day, and then returned on Monday, November 7, 2016. She testified that she worked that morning and the Elder did not say anything to her or treat her differently while she was there. At lunch time, Ms. Grosariu called and asked the Complainant to meet her at the Health Centre, where she told her she would not be working for the Elder anymore. The Complainant said she asked why but was not given an answer, just that she could not go back to work for the Elder.

[34] The grandson testified that, in 2016, he was living with his grandmother and taking care of her, as he had been raised by her from the age of two. He said the decision was made to bring in caregivers for her while he was at work. He agreed that he did not know the Complainant before she started working for his grandmother, although he knew her husband's family from the community.

[35] The grandson testified that, sometime after the Complainant started working for his grandmother, the Complainant's husband approached him at the Nation's administration building and told him, "be nice to my wife." The grandson said he did not know why the Complainant's husband said this to him, because he had not had any confrontations or

negative interactions with the Complainant, he had just said “hi” and “bye” when he saw her in his home. He testified that he had been on good terms with her husband prior to this encounter at the administration building, describing him as, “just a friendly guy”. The grandson testified that he did not tell his grandmother about this encounter at the time.

[36] The Complainant’s husband testified that he had no concerns with his wife working for the Elder, but that he was concerned about her grandson because he knew he had problems with alcohol. He said he told his wife about the grandson because she did not know anyone in the community herself. He testified that his wife did not talk to him about her employment with the Elder, or about any problems she may have had with the grandson.

[37] When asked in cross-examination if he had approached the grandson outside of the Nation’s administration building and asked him not to talk to his wife, he replied, “not that I recall.”

[38] The grandson testified that, about a month after his interaction with the Complainant’s husband at the administration building, the Complainant’s sister-in-law, Tricia, drove up to his house and said to him, “Don’t mess around with Amahbel.” He testified that he said nothing to her, he just let her talk. He said that Tricia’s sister Bernadine was also in the car and that she backed her sister up, saying to him, “Don’t mess around.” When cross examined, he said the Complainant’s sisters-in-law told him not to “bother” the Complainant “or else”. He said he could not understand why they were saying this to him. He testified that, when the Complainant came into the house, he asked her, “are you starting trouble for me?” and then he left.

[39] The grandson testified that, following the interaction with the Complainant’s sisters-in-law, he felt threatened, because it seemed like the Complainant’s family was coming after him. As such, he told his grandmother about this incident as well as the earlier comment made to him by the Complainant’s husband.

[40] The grandson said that he and the Complainant were working toward the same objective of taking care of his grandmother. He also agreed that the Complainant and his grandmother had a good relationship. He testified that he did not tell his grandmother that

the Complainant should not work for her, nor did they talk about the Complainant's race or national or ethnic origin.

[41] Ms. Skaret, the Elder's homecare nurse, testified that the Elder told her that she liked the Complainant but did not want trouble in her home. The Elder made a statement that was written down by Ms. Skaret, and witnessed by another employee of the Health Centre, on January 10, 2018. The Elder's statement says that a member of the Complainant's family had said something to her grandson that made him feel threatened. As a result, the Elder decided she did not want the Complainant working for her, as she did not want trouble in her home. She said in the statement, "I never had trouble with the rest of my workers. I don't like threats, someone will get hurt."⁶

[42] Ms. Skaret said she recorded this statement for the Elder because the Elder could not write. The Respondent's counsel advised that the Elder was not called as a witness due to her poor health. The Complainant did not object to the Elder's statement being entered as an Exhibit at the hearing. I admitted this and other hearsay evidence from the Elder as necessary given her health condition and as it met a threshold for reliability, as witnesses to these statements were available for cross-examination by the Complainant.

[43] Ms. Skaret said she did attempt to resolve the Elder's issue with the Complainant but that there was no point because, "if you know [the Elder], you know it's done".

[44] Ms. Grosariu testified that the Elder contacted her and said she did not want the Complainant as her caregiver anymore. Although Ms. Grosariu tried to ask what had happened, she says the Elder would not explain, telling her that she had already told Ms. Skaret the reason. Ms. Grosariu testified that she tried to convince the Elder to keep the Complainant on as her HCA, but she said no. Ms. Grosariu said that she has known the Elder for 19 years, that the Elder gives short answers, and that she is very determined in her ways. The Respondent's Health Centre employee witnesses all testified that the Elder was not someone to be argued with, and that when she made a decision, it was final. All of the Respondent's witnesses were clear that the Elder did not mention the Complainant's

⁶ Exhibit R-1

race or ethnic or national origin in relation to not wanting the Complainant as her HCA anymore.

[45] Ms. Grosariu said she was concerned with ensuring the Elder continued to receive the in-home care she required. She said that the Elder was so upset that she did not want to accept care again after the Complainant, but that Ms. Skaret convinced her to try a HCA from one of the agencies, and she still has such care today.

[46] Ms. Grosariu said that, in addition to her concern about the Elder being left without care, she also wanted to help the Complainant find other work. At that time, there was only one other elder in the community who did not require a live-in caregiver, and so she approached this elder and asked if she would agree to meet with the Complainant, which she did. While that particular elder had a HCA provided by an agency at the time, Ms. Grosariu thought she might consider having the Complainant as her HCA instead. Ms. Grosariu said that, after meeting with the Complainant, the elder declined to have her as her HCA. Ms. Grosariu testified that, although she tried her hardest to find another elder for the Complainant to care for, there were no other casual HCA positions to offer the Complainant.

[47] The Complainant testified in her direct examination that she was told the Health Centre would look for another resident for her to care for but nothing came up. Under cross-examination she agreed that Ms. Grosariu had set up a meeting for her with one other elder. However, she seemed unconvinced that this was a sincere attempt to find her other work, given that this elder already had a HCA.

[48] Ms. Grosariu testified that no one else has been hired for a casual HCA position in the same way the Complainant was, outside of the normal process of using the contracted homecare nursing agencies. She also testified that there are only four full-time caregivers who work for the Respondent through the Health Centre, and that three of them have been employed there for over 19 years. Although another full-time employee retired sometime after the Complainant's employment with the Elder ended, and a hiring process was conducted through the Respondent's human resources department, the Complainant did not apply for the job.

[49] The Complainant testified that she called Ms. Grosariu about a full-time HCA position that was posted. She said she asked Ms. Grosariu if she had forgotten about her and Ms. Grosariu yelled at her that she had had to do a lot of paperwork to respond to the Complainant's human rights complaint and, if she wanted to apply for the job, she should go to human resources.

[50] The Complainant testified that, after the way she had been treated by the Health Centre, she did not want to apply for a job there. She described a job as being like a second home and said she was not comfortable to apply for a job with the Health Centre after Ms. Grosariu's reaction to her human rights complaint. I note that the Complainant did not ask Ms. Grosariu about this conversation during her cross examination.

[51] The Complainant says she was never given a reason for her termination until she filed her complaint with the Commission, and then she was told that she had breached confidentiality. When asked about this, she said maybe the Respondent thought she had said something to her family about the grandson, but she testified that she does not know the grandson, so how could she have said anything about him.

[52] The Elder's statement recorded by Ms. Skaret says that she does not know what her grandson said to the Complainant, but the Complainant told her husband and then "two girls" told her grandson "leave her alone or else." She goes on to say:

I didn't like it. I don't want trouble here so I called [Ms. Grosariu] to take her. I don't want her here because I don't want trouble. I never had trouble with the rest of my workers. I don't like threats, someone will get hurt.⁷

[53] Ms. Grosariu said she did tell the Complainant why her job with the Elder was ending at the time, when she met with her at the Health Centre. She says she told her the Elder did not want her as her HCA anymore.

⁷ Exhibit R-1

V. Complainant's Position

[54] The Complainant argues in her closing submissions that she has established a *prima facie* case of discrimination, and the Respondent has failed to raise a *bona fide* statutory defence.

[55] The Complainant says she faces adverse treatment in the community because she is seen as an “outsider”. She says her termination by the Health Centre is a clear example of such treatment.

[56] Her position is that, because she was terminated following the incident involving her sister-in-law and the grandson, and because she is originally from the Philippines and not a member of the Tsuut’ina Nation, her race and ethnic origin were necessarily factors in her termination. She suggests that, because she is an outsider, the Respondent did not conduct a proper investigation before terminating her employment. Such an investigation would have given her the opportunity to defend herself against the grandson’s allegations.

[57] The Complainant argues that, because she had no problems during the course of her employment with the Elder, and because she says the grandson has a “notorious reputation” in the community due to his alleged addiction issues, she “ought to have received fairer treatment.”⁸

[58] The Complainant also says the Respondent gave her false hope that she would be given other work. She says she was given assurances during her interview that she would have other job opportunities in the community if the position with the Elder ended, and it was on this basis that she decided to quit her full-time employment in Calgary. She believes that the Respondent made no reasonable efforts to find her another position, as the one elder they introduced her to already had a long-term healthcare aide and so this was a pretext on the Respondent’s part.

[59] She argues that the Tribunal must recognize the difficulty for a complainant in this type of case to bring forth evidence of discrimination. She suggests that, even though the Respondent did not explicitly state that the reason for her termination was her race or

⁸ Written Final Argument of the Complainant, dated November 22, 2019 at para. 6.

national or ethnic origin, the Respondent's state of mind can be inferred from circumstantial evidence. She says that her experience in the community, paired with her unfair treatment by the Health Centre, is sufficient to draw the inference that it is more probable than not that the reason for her termination was discriminatory. She argues that it is therefore up to the Respondent to provide an explanation for the adverse treatment she experienced, and that the Respondent has provided inconsistent explanations for why she was terminated. She says she was not given a clear reason as to why she was terminated until she filed her human rights complaint, when she was told she had breached confidentiality.

[60] She also argues that, because she filed a complaint under the *Canada Labour Code*⁹ ("CLC") and the Respondent was ordered to pay her termination pay following an investigation, this means there was no "just cause" for her dismissal and so the explanation that she breached confidentiality does not hold up. She says that, as the allegations that led to her termination were not properly investigated and she was not provided with the chance to explain what happened, there could have been no just cause for terminating her.

[61] The Complainant argues that she has met the evidentiary burden and the Respondent has failed to adequately explain the reason for her termination.

VI. Respondent's Position

[62] The Respondent argues that the complaint should be dismissed, as the Complainant has not established that she was discriminated against under the *Act*.

[63] The Respondent says the evidence shows that the grandson felt unsafe as a result of the interactions he had with the Complainant's family members and, once he disclosed this information to his grandmother, she made the decision to terminate the Complainant's services as her HCA. The Respondent says it made it clear to the Complainant that the reason for her termination was that the Elder no longer wanted to receive services from her.

⁹ R.S.C., 1985, c.L-2.

[64] The Respondent says the evidence is clear and uncontested that, when the grandson told the Elder about his interaction with the Complainant's family, her race or national origin were not discussed. The grandson also testified that the decision to terminate the Complainant was made by the Elder alone, and not by him.

[65] The Respondent argues that the Complainant's impressions or suspicions about her race or national or ethnic origin being a factor in the decision to end her employment with the Elder do not constitute proof of discrimination. It says the Complainant's perception of negative treatment in her interactions and dealings with other Tsuut'ina Nation members is misleading and irrelevant. The Complainant's perceived suspicion of discrimination by members of the Tsuut'ina Nation in general does not support her argument or provide a link between the termination of her employment and her race or national or ethnic origin.

[66] The Respondent says the evidence provided by its witnesses makes it clear that the Complainant's termination was not discriminatory, as her race or national or ethnic origin did not play a role in the decision to terminate her services. The Respondent says the evidence is clear that the Elder's sole reason for asking that the Complainant no longer be her HCA was the interaction between her grandson and the Complainant's family members.

VII. Decision

[67] In order to conclude on a balance of probabilities that the Complainant was treated in a discriminatory manner in the termination of her employment, I would have to find that it is more likely than not that there was a connection between her race or national or ethnic origin and the termination of her employment. I do not make such a finding.

[68] The Complainant takes issue with the process, or lack thereof, followed by the Respondent when it terminated her employment. She alleges that, because she is not a member of the Tsuut'ina Nation, the Health Centre simply believed the grandson's allegations about what happened between him and members of the Complainant's family.

She argues that she was entitled to an investigation prior to her termination, and the Respondent's failure to conduct one was unfair.

[69] The Complainant's position relies on certain assumptions: 1) that she was entitled to an investigation prior to her termination from her casual HCA job with the Elder; and 2) that an investigation would have made a difference in the Respondent's decision to terminate her employment. I will deal with each of these in turn.

[70] First, the Complainant's belief that an investigation should have occurred appears to be based on employment law principles or the requirements of the *Canada Labour Code*. The Complainant entered as evidence a letter from the ESDC Labour Program indicating that her complaint of non-payment of wages had been investigated. The Inspector determined that the Respondent had violated Part III of the *CLC* by not paying the Complainant two weeks salary in lieu of notice when it terminated her employment, as required by section 230 of the *CLC*. As such, the Complainant argues, the Respondent did not have "just cause" for her termination. Relying upon employment law cases from British Columbia, the Complainant argues that the Respondent therefore should have conducted an investigation prior to terminating her.

[71] However, the complaint being considered by this Tribunal was made under the *CHRA*, not the *CLC*. The Tribunal is required to apply the *CHRA* and human rights law principles. Although the ability of other statutory tribunals to consider and apply human rights legislation in the context of their decision-making roles is well established, the inverse is not true. I cannot apply the *CLC* and employment law principles when determining whether discrimination has occurred under the *CHRA*.¹⁰

[72] There is no requirement under the *CHRA* to follow a particular process when terminating someone's employment. The *Act's* only requirement is that the termination not be discriminatory. In *Polhill v Keeseekoowenin First Nation*, a case in which the complainant similarly took issue with the fairness of the respondent First Nation's decision-making process, the Tribunal stated that, "[w]hether or not the [Respondent] acted fairly and impartially, or made a decision that was contrary to its practices or policies is not

¹⁰ *Campbell v. Canadian Imperial Bank of Commerce*, 2019 CHRT 13 at para. 100.

determinative in the circumstances. If the band council had refused to hear [the Complainant], because of her race or her national or ethnic origin, the situation would be quite different.”¹¹

[73] The same reasoning applies in the present case. The fairness of the process alone is not determinative of whether the Complainant’s termination was discriminatory. Rather, the Complainant must prove that her race or national origin or ethnic origin was connected to the termination decision. If the Complainant was entitled to an investigation prior to her termination and was denied one because of her race or national or ethnic origin, this could be evidence of discrimination. However, the Complainant provided no evidence that anyone, including a member of the Nation in her position, would have received an investigation in similar circumstances.

[74] Second, the Complainant alleges that the Respondent discriminated against her by accepting the grandson’s version of events without hearing her side of the story. She suggests that, had an investigation been conducted, the grandson’s version of events would not have been believed because of his “notorious reputation” in the community as someone with addiction issues.

[75] There is no evidence that anyone from the Health Centre ever spoke to the grandson prior to terminating the Complainant’s employment with the Elder. In fact, the evidence shows that, when Ms. Grosariu terminated the Complainant’s employment, she did not even know the precise reason the Elder no longer wanted her as her HCA because the Elder would not tell her. She simply respected the Elder’s decision that she did not want the Complainant working for her in her home any longer. This is consistent with the Respondent’s view that the Elder is essentially the employer and that it is important that the Elder be comfortable with her HCA.

[76] The Complainant’s attempt to argue that the grandson is someone not worthy of being believed because of his alleged addiction issues or reputation in the community is unnecessary and irrelevant. Although the Complainant attempted to introduce hearsay

¹¹ *Polhill v Keeseekoowenin First Nation*, 2019 CHRT 42 at para. 133.

evidence about the grandson's reputation or addiction issues, I did not permit this line of questioning to continue as it would have done nothing to advance the Complainant's case.

[77] Although the Tribunal is permitted to admit hearsay evidence, it is not required to do so. In deciding whether to do so in a particular case, the Tribunal should consider the factors of reliability and necessity which, "must be applied in a flexible manner and with due regard to the latitude that is afforded to the Tribunal to admit evidence that would not otherwise be admissible in a court of law".¹²

[78] In this case, the Complainant called her husband's cousin to testify about what she had heard about the grandson from other members of the community. Even if she had been able to testify about her own observations of the grandson, I am of the view that the grandson's reputation in the community is not relevant to this case. The Complainant suggests the grandson should not be believed because of his reputation as someone with addiction issues. Aside from being an unsubstantiated and rather offensive assertion, even if he had a poor reputation, the decision to terminate the Complainant's employment was the Elder's, not the grandson's.

[79] The Complainant was specifically told that, rather than calling hearsay evidence, she could ask the grandson directly about his addiction issues in cross-examination. Despite this, no questions were asked of the grandson with respect to his alcohol use or addictions. As such, the only evidence in this regard is hearsay and the necessity of introducing this evidence through witnesses other than the grandson himself was not established. Therefore I have decided to give this testimony no weight.

[80] The uncontested evidence before the Tribunal is that, after the grandson told the Elder about the comments made to him by the Complainant's family, the Elder told the Respondent she did not want the Complainant to be her HCA because she did not want any trouble in her home. The Elder provided a statement saying her grandson told her the Complainant's family had threatened him and she did not like threats. The Complainant did not challenge the Respondent's evidence of what the Elder said to its witnesses.

¹² *Jeffers v. Citizenship and Immigration Canada and Canada Border Service Agency*, 2008 CHRT 25 at para. 10; subsection 50(3)(c) o

[81] Even if the Respondent had conducted an investigation and spoken to the Complainant, there is nothing to indicate she would have remained employed with the Elder. There is not a significant difference between the grandson's version of events and the Complainant's. The Complainant said her sister-in-law told the grandson to be nice to the Complainant. The grandson said she told him not to bother her.

[82] I found both the Complainant and the grandson to be credible witnesses. The Complainant has urged me to reject all of the grandson's evidence because his testimony differed slightly from the summary of his anticipated evidence provided by the Respondent's legal counsel prior to the hearing. I decline to do so. The Complainant's argument in this regard was prompted by the grandson's testimony that he did not have any trouble with the Complainant when she worked for his grandmother. He testified under oath that he did not agree that the Complainant was unfriendly, which was contrary to the written summary of his evidence submitted prior to the hearing. However, this written statement was not signed by the grandson. It is not an affidavit. Given his clear response to the question, "was she unfriendly?", I accept that he did not find the Complainant to be unfriendly, but rather that he had no troubles or difficulties with her while she worked for his grandmother. This was the Complainant's evidence as well.

[83] The comments made by the Complainant's sister-in-law to the grandson occurred in what was obviously a brief encounter three years prior to the hearing. It is fair to assume that the memories of both the Complainant and the grandson have faded somewhat over time. We also did not hear from the Complainant's sister-in-law Tricia. However, to the extent that the Complainant's and the grandson's versions of events differ, I will give the Complainant the benefit of the doubt and accept her version of what was said by her sister-in-law in her presence, for the purposes of this decision. I find that the Complainant's sister-in-law asked the grandson to be nice to the Complainant.

[84] Further, I believe the grandson's testimony that the Complainant's husband made a similar comment to him some time prior to the sister-in-law incident. The Complainant's husband's evidence was that he could not recall a similar incident, not that it did not happen. I find that the Complainant's husband told the grandson to be nice to his wife.

[85] I also accept that the grandson felt threatened by the Complainant's family. On two separate occasions he was told by different members of her family how he should behave around the Complainant, who was working in his home with his grandmother. Both incidents were unprovoked by anything the grandson did or said to the Complainant, based upon the evidence of both the Complainant and the grandson. Both indicated that they had no issues with one another and that they interacted very little in any event.

[86] I accept that the grandson believed that the Complainant's family was threatening him, although he did not know why. He told his grandmother about these two incidents and how it made him feel. The Elder told the Health Centre she no longer wanted the Complainant to be her HCA because she did not want trouble in her home, as she did not like threats. None of these facts results in a finding that the Complainant herself did anything wrong that led to her termination.

[87] Nor does it lead to a finding that she breached confidentiality. It appears from the evidence that the Complainant's family members had their own pre-conceived opinions about the grandson and chose to act on them in an ill-advised attempt to protect the Complainant.

[88] The Complainant suggested that, because no reason was provided to her at the time of her termination, the only reason could have been that she is not from the Tsuut'ina Nation. I do not accept that the Complainant was not provided with a reason for her termination. Ms. Grosariu testified that she told the Complainant at the time that she could no longer work for the Elder because the Elder no longer wanted her as her HCA. While the Complainant may not feel this is sufficient, I accept that she was provided with a reason for her termination.

[89] The Complainant testified that she feels unwelcome and like an outsider in the community, yet she also testified that she knows little about the Tsuut'ina Nation and that she does not get involved with the community, aside from her own family. While I accept that the Complainant feels like an outsider in the community, the Respondent is correct that her own impressions or suspicions about how she is viewed in the community are not

sufficient proof that her race or national or ethnic origin were factors in the decisions leading to the termination of her employment.

[90] The Complainant argues that I must recognize the difficulty a complainant in her situation has in bringing forward evidence of discrimination. Indeed, the British Columbia Human Rights Tribunal in *Campbell v. Vancouver Police Board (No.4)*¹³ has recently discussed the fact that there is rarely direct evidence of racial discrimination, but rather most complaints turn on an inference. The BC Tribunal stated as follows:

[104] The subtlety of prejudice, and the availability of inference, does not create a presumption of discrimination: *Richardson v. Great Canadian Casinos and another*, 2019 BCHRT 265 at para.144. Any inference of discrimination must be rooted in the evidence of a particular case: *Bombardier* at para.88; *Batson-Dottin v. Forensic Psychiatric Hospital (No.2)*, 2018 BCHRT 246 at para.82. I agree with the VPB, and indeed it is undisputed, that the social context of this interaction is not enough, on its own, to prove that Ms. Campbell was discriminated against. In other words, the fact that she is Indigenous and had an adverse encounter with the police does not mean that she was discriminated against.

[91] The case law is clear that a complaint must be based on something other than “abstract beliefs or suspicions”.¹⁴ In *Wilson v. Canada Border Services Agency*¹⁵, the CHRT considered whether the evidence presented by the Complainant in that case established a *prima facie* case of discrimination on the basis of her race. In concluding that the evidence was not sufficient, the Tribunal stated:

[19] ... Ms. Wilson’s *belief* that because she is a Black woman, Mr. Bhatti wanted her transferred; and Mr. Bhatti’s non communication to her on the two undated occasions, is not sufficient to make out a *prima facie* case giving rise to the need for a rebuttal. Mere belief, without supporting evidence is not sufficient to support a claim of discrimination (*Filgueira v. Garfield Container Transport Inc.* 2006 FC 785 (CanLII), paras, 30 -31.

[92] Similarly, in this case, the Complainant was required to establish more than her *belief* that her race or national or ethnic origin was a factor in the termination of her employment. She failed to do so. Even the absence of an explanation for her termination

¹³ 2019 BCHRT 275.

¹⁴ *Ayangma v. Canada Health Infoway Inc.*, 2012 CanLII 100146 (PE HRC) at para. 45; application for Judicial Review refused (2013 PESC 7); affirmed (2014 PECA 13); leave to appeal to the SCC refused (2015 CanLII 3362 (SCC)).

¹⁵ 2015 CHRT 11.

would not, in the circumstances of this case, provide the required inference that the Complainant's race or ethnic or national origin played any role at all in the decision to terminate her employment.

[93] The Complainant's impression that she is viewed as an outsider in the community, paired with her treatment by the Respondent, does not lead me to draw an inference that it is more likely than not that her termination was discriminatory. Such an inference is simply not supported by the evidence provided by the parties.

[94] The Respondent was of the view that the Elder was essentially the employer and, once she decided she no longer wanted a particular HCA working for her in her home, that person's employment would end. This had happened before the Complainant started working for the Elder, when she decided she did not like the agency HCA who worked for her for only one day. I heard uncontested evidence that, while some effort was made by the Health Centre's employees to resolve the issue the Elder had with the Complainant, the Elder was very definite in her decision and known as someone whose mind was not going to be changed. I heard no evidence that the Complainant's race or national or ethnic origin played any role at all in the decision to terminate her employment. All of the Respondent's witnesses testified that none of these protected characteristics were mentioned by anyone, including the grandson, the Elder, or the Respondent's employee witnesses. Nor did I hear any evidence that any of these individuals made comments about the Complainant that are based on prejudice or stereotypes about her race or national or ethnic origin.

[95] I find that the Complainant was terminated, not for any discriminatory reason, but because her family members made comments to the grandson that made him feel threatened and, when he told his grandmother, she decided she did not want the Complainant to work in her home that she shared with her grandson. The Elder liked the Complainant, but she did not want trouble from the Complainant's family.

[96] The Complainant testified that she was aware that the job working for the Elder was a casual position and that it was contingent on the Elder's continued agreement to have her as her caregiver. However, she chose to believe that, if it did not work out with the

Elder, there would be other work available for her in the community, despite being told by Ms. Skaret that she should not quit her full-time job in Calgary. This is a risk the Complainant chose to take and there is no evidence that the failure to find her further work was related to her race or ethnic or national origin. The evidence shows that the Respondent did in fact try to find her another elder to care for, but that there was only one other elder at the time who did not have a live-in caregiver, and this elder decided she did not want the Complainant as her HCA.

[97] The Tribunal's concern is whether the Complainant's termination was discriminatory, and I received no evidence suggesting that the Complainant's race or national or ethnic origin was a factor in: i) the Respondent's decision to terminate her employment, including its failure to conduct an investigation prior to the termination; ii) the Elder's decision that she no longer wanted her as a HCA; iii) the grandson's interactions with the Complainant or her family; iv) the grandson's communication of the interaction with the Complainant's family to his grandmother; or v) the failure of the Respondent to find her further work as a HCA.

[98] Considering all of the evidence, I find that there was no connection between the Complainant's protected grounds under the *Act* and her termination, or the failure to provide her with further work.

VIII. Conclusion

[99] As I do not find that the Complainant has proven on a balance of probabilities that her race or ethnic or national origin was a factor in the decision to terminate her employment, nor in the failure to find her further employment as a HCA with the Respondent, I dismiss the complaint.

[100] I note that the Respondent requests that the complaint be dismissed "with costs"; however, the Supreme Court of Canada has decided that the Tribunal does not possess the power to award legal costs.¹⁶

¹⁶ *Canada (Canadian Human Rights Commission) v. Canada (Attorney General)*, 2011 SCC 53 at para. 64.

Signed by

Colleen Harrington
Tribunal Member

Ottawa, Ontario
April 6, 2020

Canadian Human Rights Tribunal

Parties of Record

Tribunal File: T2342/0119

Style of Cause: Amahbel Dulce-Crowchild v. Tsuut'ina Nation

Ruling of the Tribunal Dated: April 6, 2020

Date and Place of Hearing: November 12 and 13, 2019

Calgary, Alberta

Appearances:

Alice MacGregor and Niha Ather, law students from the University of Calgary Faculty of Law for the Complainant

Gilbert Eagle Bear, Counsel for the Respondent