

**Canadian Human
Rights Tribunal**



**Tribunal canadien
des droits de la personne**

Citation: 2021 CHRT 8
Date: February 18, 2021
File No: T2452/0920

[ENGLISH TRANSLATION]

Between:

Marie-Renée André

Complainant

- and -

Canadian Human Rights Commission

Commission

- and -

Matimekush-Lac John Nation Innu

Respondent

Decision

Member: Gabriel Gaudreault

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I. Background of the complaint

[1] This is a decision of the Canadian Human Rights Tribunal (the “Tribunal”) disposing of the complaint of Marie-Renée André (the “Complainant”) against Matimekush-Lac John Nation Innu (the “Respondent” or the “Nation”) under sections 7 and 14 of the *Canadian Human Rights Act* (the “CHRA”).

[2] Ms. André is of Innu origin and a member and resident of the Nation, which is located north of the City of Sept-Îles, Quebec. Ms. André alleges that she was discriminated against on the ground of her disability by her former employer, the Nation, while she was in its employ (section 7 of the CHRA). She also alleges that she was harassed by her supervisor on the ground of sex and that the Nation did not provide her with a harassment-free work environment (section 14(c) CHRA).

[3] The Canadian Human Rights Commission (the “Commission”) participated fully in the Tribunal hearing and supports Ms. André’s claims.

[4] The Nation did not appear in the proceedings before the Tribunal, nor did it attend the hearing. It did not participate in the proceedings at all, despite numerous attempts by the parties and the Tribunal to contact it. The Tribunal therefore proceeded by default. The Respondent’s absence from the proceedings is discussed in Section II of this decision.

[5] The hearing was held on January 13 and 14, 2021, by videoconference, in order to comply with the government restrictions in place as a result of the health crisis affecting Canada and the rest of the world.

[6] The parties collaborated with the Tribunal in preparing for this virtual hearing, which went off without a hitch. The Tribunal had issued specific rules to manage the virtual hearing, the documentary evidence, the filing of exhibits, the participation of witnesses, the presentation of final arguments and the filing of case law. The parties complied with its instructions. They did not indicate experiencing any major difficulties with the use of videoconferencing, and the quality of the sound and video was fine.

[7] In light of the evidence presented by Ms. André and the Commission at the hearing, the Tribunal finds that the complaint is substantiated (subsection 53(2) of the CHRA).

II. Preliminary remarks on Nation's lack of participation

[8] The Tribunal finds it necessary to make some preliminary remarks regarding the Respondent's lack of participation in the Tribunal's proceedings. The Tribunal issued an interlocutory decision on January 6, 2021, detailing the various steps taken to contact the Respondent and the various documents that were mailed to it.

[9] To summarize, the Tribunal received Ms. André's complaint on December 23, 2019. The Complainant and the Commission filed their Statement of Particulars in June 2020. The Tribunal and the parties attempted to contact the Nation by various means, including fax, telephone, email and even mail, but to no avail.

[10] On September 28, 2020, the Tribunal sent Réal McKenzie, the Nation's current chief, and the Nation's Band Council representatives a letter, informing them that the Nation was implicated as the respondent in a complaint before the Tribunal and that a hearing would be held on January 13 and 14, 2021. The Tribunal asked the Nation to communicate promptly with the Registry to discuss the situation. On October 6, 2020, the letter was picked up by the Chief himself. Purolator's proof of receipt forms part of the Tribunal's official record. The Nation did not respond.

[11] The Tribunal sent a second letter, also by mail, to Réal McKenzie, the Nation's chief, and the Nation's Band Council representatives on November 28, 2020. The letter included a notice of hearing officially informing the Nation of the hearing dates of January 13 and 14, 2021, and shared all the information the Respondent, or its representative, would need to connect to the hearing, which was to be held by videoconference. The Chief received the Tribunal's letter personally on December 8, 2020. The Canada Post proof of delivery forms part of the Tribunal's official record. The Nation did not respond.

[12] The Commission also sent the Respondent two mailings, including a motion to expand the complaint and for leave to amend, and exhibits in support of the motion, a summary of a Tribunal conference call, the official notice of hearing, and a binder containing exhibits that were to be filed as evidence at the hearing. The Commission filed proof of delivery of these two mailings, which were received by Réal McKenzie personally on December 10 and 23, 2020, in the Tribunal's official record. The Nation did not respond.

[13] Despite efforts to contact the Respondent, as well as the mailing of various items of correspondence and an official notice of hearing to the Nation's chief, the Respondent did not attend the Tribunal hearing on January 13 and 14, 2021. In light of the circumstances, the Commission therefore asked the Tribunal to proceed in the Nation's absence.

[14] The Tribunal agreed with the Commission. The Tribunal finds that the Respondent, through its Chief, was officially notified on a number of occasions that the hearing would take place on January 13 and 14, 2021.

[15] In order to comply with the principles of natural justice and procedural fairness, the Tribunal was required to give the Nation a full and ample opportunity, in person or through counsel, to appear at the inquiry, present evidence and make representations (subsections 48.9(1) and 50(1) of the CHRA). The Respondent, though officially notified, chose not to avail itself of this opportunity.

[16] The Tribunal is therefore satisfied that the Respondent received proper notice of the hearing, and that is why it was able to proceed in its absence, as prescribed by rule 9(8) of the *Canadian Human Rights Tribunal's Rules of Procedure* (03-05-04) (the "Rules").

III. Issue

[17] The issue in this complaint is clear and simple: was Ms. André discriminated against by the Nation, her employer, or any of the agents under its responsibility, contrary to section 7 and paragraph 14(c) of the CHRA, on the grounds of her disability or sex?

IV. Discrimination law

[18] The purpose of the CHRA is to give all individuals 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 (section 2 of the CHRA).

[19] It is trite law that the complainant must first discharge their burden of proof on a balance of probabilities. The complainant must show a *prima facie* case, one which covers “the allegations made and which, if they are believed, is complete and sufficient to justify a verdict in the complainant’s favour in the absence of an answer from the respondent-employer” (*Ont. Human Rights Comm. v. Simpsons-Sears*, 1985 CanLII 18 (SCC), [1985] 2 SCR 536, at paragraph 28 [*Simpsons-Sears*]).

[20] More specifically, Ms. André must establish on a balance of probabilities

(1) that she has one or more prohibited grounds of discrimination under subsection 3(2) of the CHRA (in this case, sex and disability);

(2) that she has experienced an adverse impact at the hands of the Respondent contrary to section 7 (in the area of employment) and paragraph 14(c) (harassment in matters related to employment) of the CHRA; and

(3) that the prohibited ground or grounds of discrimination was or were a factor in the adverse impact;

(See also *Moore v. British Columbia (Education)*, 2012 SCC 61 (CanLII), at paragraph 33 [*Moore*], and *Québec (Commission des droits de la personne et des droits de la jeunesse) v. Bombardier Inc. (Bombardier Aerospace Training Center)*, 2015 SCC 789 (CanLII), at paragraph 63 [*Bombardier*]; *Simpsons-Sears*, at paragraph 28).

[21] Proof of intention to discriminate is not required, nor is it necessary to demonstrate that the prohibited ground was the sole factor in the adverse impact suffered by Ms. André (*Bombardier*, at paragraphs 40 and 44).

[22] The Tribunal has repeatedly stated that discrimination is generally practiced neither overtly nor intentionally. The Tribunal must therefore consider all the circumstances of the complaint in determining whether there is a subtle scent of discrimination (*Basi v. Canadian National Railway Company*, 1988 CanLII 108 (CHRT) [*Basi*]).

[23] The Tribunal may therefore draw inferences from circumstantial evidence when the evidence offered in support of the allegations make such an inference more probable than

the other possible inferences or hypotheses. That said, circumstantial evidence must be tangibly related to the impugned decision or conduct of the respondent (*Bombardier*, at paragraph 88).

[24] Furthermore, when the Tribunal has to determine whether a complainant has met the burden of proof for their case, it has to consider the evidence in its entirety, including that filed by the respondent, as appropriate. Consequently, it may, among other things, decide that the complainant failed to meet their burden of proof if the evidence presented is not sufficiently complete or if the respondent was able to present evidence that, for example, refutes the Complainant's allegation (*Dulce Crowchild v. Tsuut'ina Nation*, 2020 CHRT 6 (CanLII), at paragraph 10; *Brunskill v. Canada Post Corporation*, 2019 CHRT 22 (CanLII), at paragraphs 64 and 65 [*Brunskill*]; *Nielsen v. Nee Tahi Buhn Indian Band*, 2019 CHRT 50 (CanLII), at paragraph 47 [*Nielsen*]; *Polhill v. Keeseekoowenin First Nation*, 2019 CHRT 42 (CanLII), at paragraph 58; *Willcott v. Freeway Transportation Inc.*, 2019 CHRT 29 (CanLII), at paragraph 12 [*Willcott*]).

[25] Conversely, if the complainant is able to meet their burden of proof, the respondent may rely on one of the defences codified in section 15 of the CHRA, or limit its liability, as appropriate, under subsection 65(2) of the CHRA. In this case, the Nation, by its absence, neither raised a defence nor limited its liability.

[26] It is with these principles in mind that the Tribunal will analyze the evidence Ms. André and the Commission presented to it at the hearing.

V. Analysis

[27] The Tribunal recognizes the efforts and contribution made by Ms. André in the Tribunal process and at the hearing despite her health problems. With the full and comforting support of her representative and friend, Martine Gagnon, Ms. André showed great perseverance and courage in pursuing her complaint before the Tribunal right to the end.

[28] The Tribunal is also of the view that the testimony of Ms. André is compelling. Despite the fact that Ms. André's mother tongue is Innu, she expressed herself easily in French. She testified with emotion and sensitivity before the Tribunal. Her testimony was accompanied

by gestures and intonations that made it possible to clearly see and understand the actions and attitudes against her, particularly those of her supervisor. Despite all of this, she showed restraint and did not exaggerate the facts, and nothing in the evidence allows the Tribunal to conclude that her credibility should in any way be questioned.

[29] As a whole, the evidence submitted by Ms. André tips the balance of probabilities in her favour, and there is no need for the Tribunal to go over each event in detail. By analyzing the evidence presented by the Complainant and the Commission in its overall context, the Tribunal is able to conclude, on a balance of probabilities, that Ms. André suffered adverse treatment in the course of her employment and was dismissed on the ground of her disability (section 7 of the CHRA), and that she was harassed by her supervisor on the ground of her sex (paragraph 14(c) of the CHRA).

[30] The Tribunal will focus on the most relevant and useful evidence in making its decision (*Turner v. Canada (Attorney General)*, 2012 FCA 159 (CanLII), at paragraph 40; *Constantinescu v. Correctional Service Canada*, 2020 CHRT 3 (CanLII), at paragraph 54).

A. Prohibited grounds of discrimination (subsection 3(1) CHRA)

(i) Disability

[31] Ms. André filed extensive evidence at the hearing supporting the existence of a disability. To this end, she filed several medical assessments from different doctors as well as letters from her psychologists.

[32] The evidence reveals that Ms. André was diagnosed with adjustment disorder with depressed mood and generalized anxiety as a result of the harassment she suffered at the hands of her supervisor. Ms. André's first diagnosis was made by Dr. Mathieu Foster in his report of April 18, 2017. This first diagnosis was made when Ms. André went on sick leave in early April 2017 as a result of the psychological distress she suffered in connection with her work environment.

[33] Dr. Foster detailed the effects on Ms. André's health, including not only anxiety, but also insomnia, a panic disorder and decreased concentration. She was prescribed

medication and visits every two weeks with either her psychologist or doctor were recommended.

[34] Two other doctors, Claude Lafortune and Josée Larochelle, both confirmed a similar diagnosis on May 9 and July 14, 2017, respectively, as supported by the medical reports filed at the hearing. Dr. Foster also saw the Complainant again on June 20, 2017, and reconfirmed the diagnosis of an adjustment disorder, adding a diagnosis of PTSD (“post-traumatic stress disorder”). Ms. André was on sick leave during this time and had been so since April 4, 2017.

[35] In 2019, Ms. André was still suffering from mental health problems. On July 9, 2019, Dr. Larochelle signed a form for the Commission des normes, de l'équité, de la santé et de la sécurité du travail (“CNESST”) in which she stated that Ms. André's major depression had resurfaced. Dr. Larochelle maintained her diagnosis of PTSD. On August 27, 2019, another form was completed by another doctor, who essentially provided the same information as Dr. Larochelle.

[36] The Tribunal also had an opportunity to review the reports of the Complainant's psychologists, Annik Riverin and Danielle Descent. Three reports were filed in evidence, dated April 3, 2017, September 21, 2018 and August 26, 2019. The reports reviewed by the Tribunal support the doctors' diagnoses and provide further details on the Complainant's psychological state.

[37] In that regard, the symptoms detailed by Ms. Riverin and Ms. Descent are consistent. They both explain that the impact on Ms. André was multi-faceted. Moreover, the various doctors who treated Ms. André also described these symptoms in their various reports. In her testimony, Ms. André, often speaking with great emotion, also explained the symptoms associated with her mental health condition.

[38] Among other things, Ms. André suffered and still suffers from some of these symptoms, including distress, sadness, recurring fatigue, loss of appetite, attention and concentration problems, insecurity, low self-esteem and self-deprecation, insomnia and nocturnal awakenings, tremors, hopelessness, loss of interest, and at times, suicidal thoughts.

[39] This having been explained, the Tribunal notes that the definition of “disability” is found in section 25 of the CHRA and provides as follows:

disability means any previous or existing mental or physical disability and includes disfigurement and previous or existing dependence on alcohol or a drug.

[40] The Tribunal wrote as follows in *Temple v. Horizon International Distributors*, 2017 CHRT 30 (CanLII), at paragraphs 38 to 40:

[T]he ground of “disability” has been subject to interpretation, most notably in *Audet v. Canadian National Railway*, 2005 CHRT 25, at para. 39 [*Audet*]. *Audet* reiterates the Federal Court of Appeal’s interpretation of “disability” in *Desormeaux v. Corporation of the City of Ottawa*, 2005 FCA 31, at paragraph 15, and defines this term as “any physical or mental impairment that results in a functional limitation, or that is associated with a perception of impairment”.

[41] The same reasoning was adopted in *Duverger v. 2553-4330 Québec Inc. (Aéropro)*, 2019 CHRT 18 (CanLII), at paragraphs 181 to 183 [*Duverger*], and in *Brunskill*, at paragraphs 71 and 72.

[42] Based on the evidence presented, the Tribunal is satisfied that Ms. André and the Commission have demonstrated, on a balance of probabilities, that Ms. André had a disability within the meaning of the CHRA, specifically with respect to her mental health (paragraph 3(1) of the CHRA).

(ii) Sex

[43] Ms. André also invokes sex, the fact of her being a woman, as a prohibited ground of discrimination in the harassment she allegedly suffered at the hands of her supervisor. There is little to be said regarding this ground since Ms. André identifies as a woman (subsection 3(1) of the CHRA).

[44] With these elements established, the Tribunal can now proceed to the next stage of the analysis set out in *Moore*, above.

B. Adverse impact and connection to the prohibited grounds of discrimination (section 7 and paragraph 14(1)(c) of the CHRA)

(i) The facts

[45] Ms. André worked as a fitness room attendant for the Nation, her employer, for a number of years. More specifically, the centre is located in the Matimekush-Lac John community, also called Schefferville, Quebec, as Ms. André explained.

[46] Ms. André worked there full-time for seven years, beginning in 2010. But it was not until June 2012 that the Nation recognized her as a permanent employee. This gave her the opportunity to receive more employment benefits.

[47] As a fitness room attendant, she welcomed clients and prepared fitness and nutrition plans. She was also responsible for the centre's maintenance.

[48] Ms. André was the sole employee of the fitness room, which was located in a multi-purpose building. The room was adjacent to a community hall, where other women performed work, including cleaning. The Complainant explained that community members used the community hall for various events and gatherings.

[49] Until February 2017, Ms. André reported to the Nation directly. She explained that she had never had any problems in her job and dealt with the Council directly at that time. However, in February 2017, Ms. André found out that the Council had hired a new supervisor to, among other things, supervise her. This supervisor was Posho Pilot ("Mr. Pilot").

[50] It was on Mr. Pilot's arrival that the situation in Ms. André's work environment began to deteriorate, eventually leading to her sick leave, which began on April 4, 2017. Consequently, less than three months went by between Mr. Pilot's starting his job and Ms. André's going on sick leave.

[51] At the hearing, Ms. André testified about various events that happened at work during this period (between February and early April 2017) and also described Mr. Pilot's actions and attitude.

[52] One of the first events that occurred was related to Ms. André's schedule. Mr. Pilot had wanted to change her work schedule and reduce her hours for no apparent reason even though she had always worked the same schedule and the same number of hours when she reported to the Council. Ms. André had to involve the Council to ensure that her schedule remained the same, which was contrary to Mr. Pilot's wishes and intentions.

[53] Despite this, on March 24, 2017, Mr. Pilot changed the Complainant's schedule unilaterally and without warning, contrary to the Council's instructions. In her own words, Ms. André described the schedule as [TRANSLATION] "mean". In other words, she believed that Mr. Pilot simply wanted to provoke and demean her by giving her impossible schedules.

[54] In addition, Ms. André explained that during the three months she worked under Mr. Pilot's supervision, he would, now and then, threaten to cut her hours. Mr. Pilot even ordered her to clean without pay after her eight-hour workday.

[55] Ms. André also testified that Mr. Pilot supervised her in the fitness room. He wanted to ensure that the Complainant was always at work. If the Complainant's car was not in the parking lot, he would storm back into the building to find out where she was. If she was at work, he would comment that her car was not in the parking lot.

[56] Mr. Pilot also accused Ms. André of stealing and of breaking various items in the fitness room. She testified that on one occasion Mr. Pilot had left money lying on the counter in the fitness room. Not knowing who it belonged to, Ms. André had taken the money and put it behind the counter, underneath the sink. She had wanted to make sure that no one took the money. Mr. Pilot had then accused her of stealing the money, and Ms. André had explained to him that she had simply put it away and had told him where to find it. She told the Tribunal that she was certain that her supervisor had been testing her, provoking her, and trying to catch her in the act and trap her.

[57] On another occasion, he also accused her of stealing his lunch, a sub sandwich. He shouted at her and asked if she had stolen his lunch. After this event, Mr. Pilot had forbidden the Complainant to enter the kitchen, which was in the community hall next to the fitness room.

[58] Ms. André would warm up her meals there, as this was where the microwave was. Since she was now prohibited from going into the kitchen and using the microwave, she set up her own microwave in the electrical room, which was located in the hallway between the fitness room and the community hall. When Mr. Pilot became aware of this set-up, he simply locked the electrical room, preventing the Complainant from accessing it. As a result, Ms. André was prevented from warming up her meals while she was at work. Ms. André therefore had to take a few minutes during her break to quickly go home and warm up her meals, in the knowledge that she was being monitored by her supervisor and that she was not allowed to leave her workplace.

[59] Mr. Pilot categorically refused to allow Ms. André to leave the building during her working hours, including during her meal breaks, literally sequestering her at work. This left Ms. André in a no-win situation. She explained at the hearing that when she was at work, she felt suffocated: she felt, as she put it, as if she were [TRANSLATION] “in prison”.

[60] Ms. André also testified that Mr. Pilot often told her in discussions that he was [TRANSLATION] “the boss”. He would raise his voice and yell at her. He would get angry, and bang on the desk or doorframes.

[61] The Complainant testified that she was afraid of him and feared when he would show up at the workplace. She would cry after he left, while trying to hide her tears from the clients who came to use the fitness room. Ms. André was afraid of Mr. Pilot, his yelling, his outbursts of rage and his overbearing manner. She described her supervisor as being big and burly, and noted that you could easily tell when he was not in a good mood.

[62] In her testimony before the Tribunal, she clearly mimicked the looks he would give her, as well as his banging his fist on the table and on doorframes. Ms. André cries when she talks about this: her former supervisor’s moods, attitudes and actions still affect her today.

[63] Mr. Rodrigue, a former fitness room client, testified about Ms. André’s distress at the hearing. He explained that he had seen Ms. André crying because he regularly came to the fitness room to work out.

[64] Mr. Rodrigue's testimony was compelling, sincere and full of empathy for what the Complainant had gone through. He confirmed that Ms. André had told him about several events she had experienced with Mr. Pilot, but he admitted that he had never witnessed any of those events or Mr. Pilot's attitudes. That said, he corroborated that Ms. André had confided in him at the time of the events.

[65] It is important to mention that Ms. André explained that Mr. Pilot also acted aggressively towards the other women who worked in the community hall and particularly the employees who did the cleaning. She stated that another woman, an employee of the community hall, came to her to talk about the psychological distress she was suffering as a result of Mr. Pilot's actions.

[66] For example, the employee told her that while she was cleaning, Mr. Pilot had run his finger along the wall to make sure it was clean and dust-free. Unhappy with the result, he had, in an authoritarian tone, ordered her to redo her job. Ms. André explained that she and the other employee had shared their respective experiences with each other. Ms. André took the time to tell the Tribunal that while she had complained about Mr. Pilot's actions, the other women working in the building had not.

[67] Ms. André also recounted that she had sometimes found herself in awkward situations because of Mr. Pilot's orders. She had been afraid to disobey him. For example, Mr. Pilot was responsible for renting out the community hall to other members of the community. He was responsible for unlocking the doors, which he sometimes did not do. The people who had rented the hall would then come to the room next door, the fitness room. As indicated above, the two rooms are connected by a corridor.

[68] The Complainant then candidly explained that she was able to let the renters go through the corridor to get to the community hall. However, when Mr. Pilot decided that enough was enough, he forbade her to let anyone to take that way. Ms. André felt uncomfortable with this decision knowing that it would mean Elders waiting outside in the cold for Mr. Pilot to unlock the door to the community hall.

[69] Ms. André recounted another series of events involving the use of the Internet in the fitness room. She explained that she needed the Internet for her work because she

sometimes had to do research in order to prepare training and nutrition plans for her clients. The Internet helped her find answers for the fitness room clients. According to Ms. André, the Council had installed the Internet in the fitness room to allow her to do her work.

[70] But Mr. Pilot decided to cut off the Internet access, telling her that if she had access, she would be surfing the Web all the time. Mr. Pilot effectively deprived Ms. André of the Internet.

[71] Ms. André stated that one day she saw Mr. Pilot and a technician who was in the process of installing the Internet in the building. She had asked him if he could set up the Internet in her office. Mr. Pilot replied that this was impossible. Not believing him, Ms. André spoke directly with the technician, who confirmed that it was possible. She stated that Mr. Pilot had then, as she put it, [TRANSLATION] “glowered” at her.

[72] Ms. André complained to the Council, the Chief and the Council members about Mr. Pilot’s depriving her of the Internet. The Council agreed with her and asked her to inform Mr. Pilot that she should have access. But Mr. Pilot was determined to deprive her of the Internet because he carried the Council-owned router through which the network could be accessed in the building around with him. When he passed Ms. André with the router in his hands, he would look at her, smile and laugh. The Complainant definitely viewed this as mockery and contempt on the part of her supervisor. Ms. André spoke to a human resources officer, Ms. d’Arc, who confirmed to her, as the Council had done, that she was entitled to Internet access.

[73] The events involving the router had a significant impact on the Complainant, who could not take it anymore. Ms. André testified that following her supervisor’s actions, she had fainted on coming home. She explained that she had gone home, but that she could not remember how she got there. She had fallen to the ground, and everything had gone black. She had regained consciousness and sat up, but had not understood what was happening.

[74] Ms. André testified that she had cried a lot following these events and that she contacted her friend Martine Gagnon on March 28, 2017, while Ms. Gagnon was in Rouyn-Noranda, Quebec. Ms. André had told her that she wanted to give everything up and that

she had had enough of her job because of Mr. Pilot's actions. Ms. Gagnon had suggested that she go and see a doctor and a psychologist for help.

[75] Ms. André testified that she had approached the Nation's Council, the Chief and the Council members on a number of occasions to tell them of the difficulties she was having with Mr. Pilot. She had sought out the Council to discuss the problems surrounding her schedule and her Internet set-up, among other things. The Tribunal notes that Ms. André also confided in one of the Nation's Council members, Paco Vachon, who lived across the street from the fitness room. Mr. Vachon had told her to forget about Mr. Pilot, and no further action was taken.

[76] She had also turned to Noël André, who is not only her brother, but also a member on the Nation's band council, to discuss the situation. Mr. André had advised her to talk to the Council. Ms. André noted that she understood that her brother had been in a difficult position, as not only a Council member but also her brother.

[77] The evidence does not show that the Nation intervened in any way with Mr. Pilot. Yet, Ms. André complained about various events on a number of occasions and confided in Mr. Vachon, a Council member.

[78] Ms. André finally managed to get in touch with her psychologist, Ms. Descent, at her home, while the latter was not with the community. Ms. Descent advised her not to make any rash decisions and to go and see the psychologist who was there, Ms. Riverin, until she herself came back to work in the community.

[79] Ms. André also saw a doctor, and it was he who placed her on sick leave as of April 4, 2017. Ms. André was on sick leave for several months, during which time she continued to see the various physicians in the community, namely Dr. Foster, Dr. Larochelle and Dr. Lafontaine, as well as the psychologists Ms. Riverin and Ms. Descent.

[80] The Complainant applied to her insurance provider, SSQ Financial Group, for disability insurance while she was on sick leave, which was granted. She was paid disability insurance for several months, which gave her an income despite the circumstances.

[81] That said, Ms. André testified that between June and July 2017 her insurance provider advised her that she should apply to the CNESST instead, since it believed that her absence from work was the result of a work accident or an employment injury. It was then that Ms. André, with the support of Dr. Larochelle, filled out the forms for making a claim to the CNESST. The CNESST rejected her claim, a decision that Ms. André challenged before the Tribunal administratif du travail.

[82] Administrative Judge Daniel Louis finally rendered a decision dated January 21, 2019 (file number 651223-09-1711), which was filed in the Tribunal's record. He found in favour of Ms. André and overturned the CNESST decision. Mr. Louis stated that the Complainant had indeed suffered an employment injury on April 4, 2017, that she was therefore entitled to compensation and that she would retroactively receive the amounts to which she was entitled.

[83] Ms. André stated, however, that during the summer of 2017, while her insurance provider and the CNESST were arguing over who should pay for her absence from work, she found herself in a precarious financial situation. Since her insurance provider had terminated her benefits by referring her to the CNESST, which rejected her initial claim, Ms. André found herself without an income.

[84] In August 2017, she therefore turned to the Nation, her employer, to ask for assistance and financial support to get through these difficult times. While she was still absent from work, the Complainant received information that the Nation wanted to abolish her position as a fitness room attendant. She explained that her employer's announcement of the abolition of her position had angered her given that she was about to ask for financial assistance.

[85] Ms. André continued in this vein and testified that she had gone to the Band Council quite regularly to inquire about the situation. However, she came up against contradictory information from the Respondent, sometimes being told that her position was not abolished, and other times being told that her position would indeed be abolished.

[86] This confusion affected Ms. André because she felt that she had to fight for what was owed to her. She knew that if her position was abolished, not only would she receive

compensation for the termination of her employment, but she would also be able to claim employment insurance. The Tribunal notes that Ms. André was struggling financially and that, in order to support herself, she even had to withdraw money from her retirement savings.

[87] The evidence also reveals that it took some time for the Nation to make a final decision. Ms. André attributes this delay to the fact that the Nation was intending to adopt a new termination of employment and compensation policy. She would have received less money under this future policy than under the policy then in effect.

[88] Ms. André, who was still suffering from mental health problems and was still on sick leave, explained that she finally went to the Nation's Council and, as she says, [TRANSLATION] "threw a fit" in front of the Council. She testified that she had wanted it to end and that she could no longer handle the uncertainty she was in. She had wanted the Nation to make a decision, even if it meant abolishing her position, so that she could move on. After this event, the then chief of the Nation, Mr. Ambroise, went to Ms. André's parents to tell them about the situation and their daughter's behaviour.

[89] Ms. André testified that because her parents are Elders and [TRANSLATION] "they are her life", as she put it, she had not wanted to involve them in her issues with her employer or tell them about her health problems. She had not wanted to hurt or worry them. However, Mr. Ambroise had met with her parents to tell them about the situation without telling the Complainant.

[90] Ms. André's father contacted her, telling her that he was aware that she had gone to the Council and had [TRANSLATION] "screamed" at them. He told her that the Chief had confirmed that her position was not abolished, which contradicted what Nation officials had told her previously.

[91] The following day, the Complainant went to the Council offices to meet with Mr. Ambroise. She insisted on meeting with him, and he asked her to leave his office. She asked him why he had met with her parents and why he had told them that her position had not been abolished, which contradicted the other information she had received. The Chief

insisted that she leave his office, telling her that she was [TRANSLATION] “pig-headed” and that her financial problems were not his problem.

[92] Despite the Chief’s comments and the contradictory information from the Nation, Ms. André received a letter on September 29, 2017, informing her that her position as a fitness room attendant had been abolished and terminating her employment. Ms. André was therefore entitled to receive compensation for the termination of her employment, which caused her further problems. She explained that the various employees responsible for providing her with her records of employment and the amounts owed made a number of errors. Ms. André had to go to the Council’s offices several times to have the various errors made by the administration corrected. Eventually, an employee threatened to call the police if she did not leave the office when all Ms. André wanted was to have her records of employment corrected.

[93] The Complainant, who is still grappling with mental health issues, explained that those were particularly challenging times for her. The Tribunal understands that despite the abolition of her position, which could have allowed Ms. André to bring closure to this part of her life, she continued to have issues with her former employer.

[94] Ms. André was nonetheless able to receive employment insurance benefits when her position was abolished. However, the many errors made by the Nation’s administration had collateral repercussions because the amounts paid to her by Employment and Social Development Canada were not accurate. The Complainant therefore accumulated an overpayment, which she later had to repay.

(ii) Harassment (paragraph 14(1)(c) of the CHRA)

[95] That said, the Tribunal is indeed of the view that the evidence supports Ms. André’s arguments that she was harassed by Mr. Pilot, her supervisor, and that based on a balance of probabilities, Ms. André’s sex was a factor in the adverse impact (*Bombardier*, at paragraph 48).

[96] In *Nielsen*, at paragraphs 115 to 120, the Tribunal summarized the key elements to consider in determining whether there was harassment within the meaning of the CHRA:

[115] Subsection 14 (1)(c) *CHRA* provides that harassing someone in matters related to employment on a prohibited ground of discrimination is a discriminatory practice.

[116] Harassment is not defined in the *CHRA*. That said, the Tribunal's jurisprudence provides a useful and relevant insight into what constitutes harassment in matters related to employment, which is generally defined as unsolicited or unwelcome conduct, linked to a prohibited ground of discrimination and which has adverse consequences for the victim (see for example *Alizadeh-Ebadi v. Manitoba Telecom Services Inc.* [*Alizadeh*], 2017 CHRT 36, at para. 163 as well as *Morin v. Canada (Attorney General)* [*Morin*], 2005 CHRT 41, at para. 246).

[117] The Tribunal has often written that harassment is essentially the creation of a hostile work environment that undermines the Complainant's personal dignity (see, among others, *Alizadeh*, supra, at para. 163, *Dawson v. Canada Post Corporation*, 2008 CHRT 41; *Chopra v. Health Canada*, 2008 CHRT 39; *Hill v. Air Canada*, 2003 CHRT 9).

[118] I would qualify by pointing out that in my view, in matters of harassment, creation of a hostile climate is not always a prerequisite to the extent that, for example, in *Duverger v. 2553-4330 Québec Inc. (Aéropro)* [*Duverger*], 2019 CHRT 8, it was determined that post-employment harassment was also protected by the *CHRA*.

[119] Therefore, the important element is rather the existence of a sufficient connection with the employment context (see *Duverger*, supra, at paras. 108 and subsequent. See also *British Columbia Human Rights Tribunal v. Schrenk*, 2007 SCC 62, at paras. 37, 38 and 40).

[120] Having said that, I would point out that a vulgar, crude or tasteless joke, on its own, will not generally constitute harassment. There must be a form of persistence or repetition in the alleged conduct (*Alizadeh*, supra, at para. 163 and *Morin*, supra, at para. 246). Nevertheless, a single serious or grave incident may be sufficient (see for example *Stanger v. Canada Post Corporation*, 2017 CHRT 8, at paras. 19 to 22; *Alizadeh*, supra, at para. 163; *Morin*, supra, at para. 246).).

[97] In Ms. André's case, the evidence presented establishes that Mr. Pilot's actions and attitudes constituted unacceptable behaviour in a work environment. Ms. André did not solicit this behaviour, and it is abundantly clear that the behaviour created a toxic work environment. The unhealthy work environment very quickly led to a deterioration in Ms. André's mental health and her having to take sick leave.

[98] Mr. Pilot's actions and attitudes were disproportionate and did not seem to be based on any reason or need related to his work as a supervisor. He put himself in a position of absolute authority, going so far even as to defy the decisions of the Nation, the entity he reported to. Mr. Pilot used his authority and his powers to control Ms. André in every area of her work: he prevented her from warming up her meals; blocked her access to certain rooms in the building; forbade her to leave the building, even during coffee and lunch breaks; ran her down, raised his voice and shouted at her; banged on desks and door frames; denigrated her; looked down on her; and provoked her by controlling her use of the Internet. In short, he monitored her in a completely excessive manner and disrespected her in every regard.

[99] The events, as described by Ms. André, were not isolated and intensified over a three-month period. After Mr. Pilot arrived, the workplace quickly became hostile and unhealthy. Mr. Pilot's actions had a direct impact on Ms. André's dignity, yet she had never had any problems under the Nation's supervision between 2010 and 2017. Things were so intense that her mental state deteriorated in a matter of weeks, resulting in her going on sick leave. The Tribunal notes that Mr. Pilot's actions even led to Ms. André having suicidal thoughts, which shows just how serious the situation was.

[100] As the Tribunal noted earlier, discrimination is not usually practiced overtly, and the Tribunal has to be attentive to the subtle scent of discrimination a complaint might reveal. The Tribunal also has to assess all the evidence and may draw inferences from the circumstantial evidence before it (*Basi*, above; *Bombardier*, at paragraph 88).

[101] Ms. André described Mr. Pilot as a big, burly man. The evidence reveals that she was afraid of him, that she feared the moment he would arrive at work. He would [TRANSLATION] "glower" at her and bang on his desk and doorframes. He would raise his voice, shouting that he was [TRANSLATION] "the boss". Ms. André explained that when he left the fitness room, she would often cry.

[102] The portion of her testimony regarding the conversations she had with other women of the community hall who were experiencing similar attitudes and inappropriate, misplaced behaviour from Mr. Pilot is important and determinative. She stated that she was the only

woman to complain about Mr. Pilot's behaviour even though other women were living the same thing.

[103] The evidence therefore supports the finding that Mr. Pilot, a man and the supervisor of the fitness room and community hall, had and wanted to have control over these women and, in the case before us, Ms. André, his own employee. The circumstantial evidence presented to the Tribunal allows it to infer, on a balance of probabilities, that sex was a factor in the adverse impact. The Complainant was therefore harassed because of her sex in matters related to employment pursuant to paragraph 14(c) of the CHRA.

(iii) Adverse differential treatment in the course of employment (section 7 of the CHRA)

[104] Ms. André and the Commission argued that the adverse impact suffered under section 7 of the CHRA, that is, in the course of employment, was related to the prohibited ground of discrimination of disability, specifically, the Complainant's mental state. The Tribunal therefore has to determine whether Ms. André's disability was a factor in the adverse impact.

[105] As for the adverse differential treatment Ms. André allegedly suffered in the course of employment at the hands of the Respondent (section 7 of the CHRA), it is the Tribunal's opinion that the evidence presented establishes this on a balance of probabilities. Indeed, the Tribunal finds that Ms. André was treated adversely by her employer, not only during her employment, but also because of her dismissal, and that disability was one of the factors that led to these adverse impacts (*Bombardier*, at paragraph 48).

[106] To begin with, the evidence reveals that the Nation was aware that Ms. André was having trouble with her supervisor since she met with the Council on various occasions to discuss the matter. She tried, for example, to resolve the problem of her schedule, and also that of her Internet access.

[107] Ms. André also confided in Mr. Vachon, a member of the Nation's Band Council, who was familiar with the difficulties Ms. André was having with her supervisor. He even told her to forget about Mr. Pilot.

[108] In addition, Ms. André spoke to her brother, also a Council member. When Ms. André talked to the Council, Mr. André had to withdraw from the discussion to avoid a possible conflict of interest. This supports the Complainant's claims: she stated that she spoke to the Council about the difficulties and obstacles she was experiencing with her supervisor, Mr. Pilot, on a number of occasions.

[109] More importantly, the Complainant was off work due to illness from April 4, 2017. She received disability insurance through her insurance provider, and the Nation was aware that she was off because she was sick. Ms. André stated that the Respondent had received the forms that were filled in by the various doctors treating her. The Nation was therefore aware of Ms. André's health.

[110] When Ms. André stopped receiving disability insurance in the summer of 2017 and her CNESST claim was rejected, she would regularly go and see the Council to find out what was happening with her fitness room attendant position. She also wanted to explore whether the Nation would be able to give her financial aid given her lack of earnings. The confusion caused by the Respondent worsened Ms. André's state, and Ms. André [TRANSLATION] "threw a fit in front of them", to quote her. She wanted the matter to be resolved. It was at that point that the Nation's then chief, Mr. Amboise, decided to meet with Ms. André's parents to explain the situation to them, without, however, telling the Complainant about this.

[111] In my opinion, the fit she threw shows the psychological distress Ms. André was in: she was vulnerable, fragile, confused and without an income, waiting for a decision from the Nation that did not come. The Respondent was aware not only of the Complainant's mental health, having been sent information to justify her absence from work, but also of her repeated visits to the Nation's offices. The Chief also knew of the Complainant's psychological distress, as did a number of other Council members, including Mr. André, the Complainant's brother, and Mr. Vachon. The Tribunal understands the Complainant's brother's limited involvement, however, given that it put him in a conflict of interest.

[112] The Tribunal would add that even though the Nation was aware of the situation and even though Ms. André visited the Council several times, among other things, to ask them

for help with respect to her use of the Internet and her schedule, the evidence reveals that the Nation did not take any measures to rectify the situation. The Complainant's supervisor imposed unjustifiable restrictions on her, and despite her complaining to the Nation on various occasions and despite the fact that the Nation was, or ought to have been, well aware of the situation, it did not take any measures to rectify the situation.

[113] Moreover, Ms. André, who was on sick leave at the time, had to manage the confusion surrounding the potential abolition of her position, because the Nation's officers, including its chief, gave her contradictory information. She quickly found herself in troubled waters financially, at a time when her mental health was still fragile, increasing her distress. As a result, Ms. André ended up losing her temper and [TRANSLATION] "threw a fit" in front of her employer at the end of summer 2017. That is when the Chief, Mr. Amboise, decided to go and talk to Ms. André's parents without her consent rather than discussing the situation with the Complainant herself.

[114] Taken together, all these factors lead the Tribunal to find that the Complainant did in fact experience adverse differential treatment in the course of employment contrary to paragraph 7(a) of the CHRA.

[115] In further illustration of this, the Nation gave Ms. André a letter confirming the abolition of her position on September 29, 2017. Yet, the evidence reveals that the fitness room remained open while Ms. André was on sick leave and even after her position was abolished. This was confirmed by Ms. André's and Mr. Rodrigue's testimony. Ms. André also stated that her relatives had confirmed to her that the room stayed open despite her losing her job.

[116] Consequently, the circumstantial evidence allows the Tribunal to infer that the abolition of Ms. André's position was merely a pretext for terminating her employment even though she was on sick leave and the Respondent was aware of her mental condition. Instead of managing the situation, the Nation claimed that the position was being abolished.

[117] Absent any contrary evidence, the Tribunal must find on a balance of probabilities that Ms. André's disability was one of the factors in the adverse impact she suffered, namely,

the Nation's termination of her employment by abolishing her position, contrary to paragraph 7(b) of the CHRA.

VI. Nation's defence and presumption (section 15 and 65 of the CHRA)

[118] Since the Tribunal has found that Ms. André suffered harassment in matters related to employment and adverse differential treatment in the course of employment, the Respondent would have had an opportunity to raise a defence under the CHRA.

[119] Since the Nation did not participate in the hearing, it did not provide any evidence to suggest that the harassment, adverse treatment and termination of Ms. André's employment were justified under paragraph 15(1)(a) and subsection 15(2) of the CHRA.

[120] Moreover, the Respondent did not provide any evidence allowing the Tribunal to rebut the presumption under section 65 of the CHRA. Subsection 65(1) of the CHRA provides as follows:

Subject to subsection (2), 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, for the purposes of this Act, be deemed to be an act or omission committed by that person, association or organization.

[121] Ms. André filed her complaint against the Nation. The complaint is not directed at Mr. Pilot, Mr. Ambroise or the other employees involved in the events leading up to it.

[122] Having said that, it is clear to the Tribunal that the function of chief, of supervisor and of all the other employees involved in the various events are covered by the designation of "officer, director, employee or agent" of section 65 of the CHRA. This makes sense, given that these are paid functions and the work they entail is necessarily performed for and by officers, directors, employees or agents of the Nation (see *Nielsen*, at paragraphs 126 to 132).

[123] Since it was not rebutted by the Respondent (subsection 65(2) of the CHRA), the presumption of subsection 65(1) of the CHRA applies, and the Nation is therefore

responsible for the actions of the individuals involved in the events that led to the complaint, which includes the harassment by Mr. Pilot.

VII. Remedies

[124] Since the Tribunal has found that Ms. André's complaint is substantiated (subsection 53(2) of the CHRA), it may order any of the remedies provided for in the CHRA, including in its order any of the terms that the Tribunal considers appropriate.

A. Wages deprived of and expenses incurred (paragraph 53(2)(c) of the CHRA)

(i) Wages Complainant deprived of in 2017, 2018 and 2019

[125] Under paragraph 53(2)(c) of the CHRA, the Tribunal may order that the victim of discrimination be compensated for any or all of the wages that the victim was deprived of and for any expenses incurred by the victim as a result of the discriminatory practice.

[126] It should also be noted that the Federal Court of Appeal commented on losses in *Chopra v. Canada (Attorney General)*, 2007 FCA 268, at paragraph 32 [*Chopra*]. It noted that there has to be a causal connection between the discriminatory practice and the losses. The onus is on the party claiming the damages to show and establish this connection (*Duverger*, at paragraph 255).

[127] Ms. André is claiming wage losses of \$15,000.00 per year for 2017, 2018 and 2019, for a total of \$45,000.00. She is also claiming \$21,486.42 from her Native Benefits Plan (NBP) because, when her income dropped, she had to withdraw that amount to support herself. She submits that she would not have withdrawn this money had the Nation not discriminated against her.

[128] Finally, she is claiming \$8,919.00 for reimbursing Employment and Social Development Canada for an overpayment of employment insurance. Ms. André explained that had the Respondent and its agents not made errors in managing her records of employment, she would not have received this overpayment and would not have had to reimburse it.

[129] The evidence presented by Ms. André shows that, when she was working for the Nation as a fitness room attendant, she earned \$15.39 an hour and worked 40 hours a week, 52 weeks a year. Based on a simple calculation, her total income was therefore \$32,011.20 per year. Ms. André came up with the same amount in her spreadsheet, filed at the hearing for the Tribunal's benefit.

[130] The Commission and Ms. André presented no evidence to the Tribunal establishing that the Complainant received any money other than her wages when she worked at the fitness room, as previously established. The evidence also does not make it possible for the Tribunal to determine the value of the benefits that Ms. André received or whether she worked overtime on a regular basis. Other than for 2017, 2018 and 2019, the parties did not provide any evidence to establish the wages Ms. André earned in the years before she lost her job.

[131] Accordingly, the Tribunal finds that Ms. André's stated annual pay was \$32,011.20. The Tribunal will determine on the basis of this amount whether she was deprived of wages as a result of the discriminatory practice.

[132] Ms. André filed documents concerning her income for 2017, 2018 and 2019. These documents include pay slips and statements from the Canadian and Quebec governments for 2017, 2018 and 2019, a statement of account and a letter from Employment and Social Development Canada, a spreadsheet of summary calculations of damages created by Ms. André, and employment insurance statements.

[133] The evidence shows that the Complainant's pay was \$32,505.74 in 2017. The evidence submitted by Ms. André does not make it possible to establish the source of this income or any disability insurance or employment insurance amounts she might have received.

[134] In 2018, her income was \$24,706.30 in wages and \$6,442.00 in employment insurance benefits, for a total of \$31,148.30. Ms. André explained that she had worked as a housekeeper for her parents and had therefore received some wages.

[135] In 2018, Ms. André also withdrew some money from her NBP, which is the equivalent of a Registered Retirement Savings Plan. She withdrew \$21,552.14.

[136] In 2019, Ms. André received \$6,450.00 in employment insurance benefits, \$2,028.00 in wages and \$39,631.71 in worker's compensation. That amount was paid to her following a decision by the Tribunal administratif du travail, which ordered that compensation be paid retroactively to the date of her workplace accident, April 4, 2017. Her total income for 2019 was therefore \$48,109.71.

[137] Ms. André further explained that, because of the money she received from the CNESST, which were retroactive to April 2017, she had had to reimburse the Employment Insurance Commission for some of the money received.

[138] However, the evidence presented to the Tribunal does not clearly establish the exact amount the Complainant reimbursed as a direct result of the CNESST compensation. She filed in evidence a \$8,919.00 repayment to the Employment Insurance Commission. According to her, this amount had to be reimbursed because of errors the Respondent made in her records of employment, which resulted in a miscalculation of the benefits she was entitled to. No specific evidence was presented regarding the other amounts she allegedly reimbursed.

[139] The Tribunal reiterates that the onus is on the party claiming the damages to demonstrate, on a balance of probabilities, a causal connection between the damages and the discriminatory practice (*Chopra*, above). In this case, Ms. André's evidence has several shortcomings.

[140] The Tribunal finds itself in a delicate position since the documents the parties filed in evidence are limited. Let's not forget that Ms. André is claiming \$45,000.00 in lost wages. For example, it is difficult for the Tribunal to establish exactly how much Ms. André reimbursed the Employment Insurance Commission for, other than the \$8,919.00. The Tribunal asked Ms. André and Ms. Gagnon questions on this subject, but their answers lacked specifics, and they admitted that they had sent the Tribunal the information they had to the best of their knowledge.

[141] The Tribunal must base itself on the evidence presented at the hearing to determine the damages it can award to Ms. André. Based on her testimony and the documentary evidence she filed, the Tribunal can, however, draw some conclusions.

[142] First, Ms. André's annual pay has been established at \$32,011.20. Based on the evidence filed, her income was \$32,505.74 in 2017, \$31,148.62 in 2018 and \$48,706.62 in 2019.

[143] Had there been no discrimination and the Complainant had kept her job, she would have received \$96,033.60 in total wages for the three years, 2017, 2018 and 2019 (\$32,011.20 per year over three years). As has already been explained, nothing in the evidence suggests that Ms. André received additional amounts or wages. If the Tribunal calculates what Ms. André actually received from all sources for that three-year period, it adds up to \$112,360.98.

[144] Now, if the Tribunal subtracts from this amount the wages she would have received if she had kept her job (\$112,360.98 minus \$96,033.60), Ms. André received \$16,327.38 more than if she had continued to work as an attendant.

[145] The Tribunal understands that Ms. André repaid some money to the Employment Insurance Commission, such as, for example, the \$8,919.00 received as a result of errors made by the Respondent. If we subtract this \$8,919.00 reimbursement from her total pay for 2017, 2018 and 2019, Ms. André actually received \$7,408.38 more than what she would have received if she had kept her job during that period.

[146] Ms. André also testified that she had repaid other amounts to the Employment Insurance Commission, among other things, because of the benefits she received retroactively from the CNESST. That said, she was unable to give the Tribunal the amounts of those reimbursements, and the evidence does not make it possible to establish those amounts.

[147] In light of these calculations, the Tribunal is unfortunately unable to establish how Ms. André can claim annual wage losses of \$15,000 for those three years or the amount of other employment insurance repayments arising from the money she received from the

CNESST. Ms. André did not properly explain her reasoning to the Tribunal and was unable to establish the causal connection between the lost wages claimed and the discrimination suffered (*Chopra*, above).

[148] For these reasons, the Tribunal cannot allow her claim given the lack of proof on a balance of probabilities.

(ii) Future wage losses

[149] In its final arguments, the Commission asked the Tribunal to order financial compensation for Ms. André's wage losses for the next five years, given that her job loss was caused by the Respondent's discriminatory practices. In addition, the Commission submitted that, since the community's biggest employer is the Nation itself, the chances of Ms. André finding a job like the fitness room attendant position are slim. The Commission is therefore claiming compensation for Ms. André's future wage losses.

[150] The Tribunal notes that the Commission's claim does not appear anywhere in the Commission's or in Ms. André's Statement of Particulars.

[151] Although the Commission reserves the right to claim additional remedies based on evidence that may be presented at the hearing, it is still surprising that it is making this claim in its final arguments, especially considering how large the amount is. The Tribunal wonders why this remedy was not considered before the hearing and was not included in the parties' statements of particulars.

[152] The Tribunal did authorize the statements of particulars to be amended, among other things, to enable Ms. André to clarify and expand on the personal remedies she was seeking. The Commission also amended and clarified its remedies, but did not consider it necessary to add damages for future wage losses specifically. Also, because of the significance of these amendments and their impact on the complaint, the amendments were served on the Nation through Chief Réal McKenzie himself.

[153] The Tribunal is well aware that the Respondent did not take part in the proceedings or in the hearing. But the Commission's claim has a considerable impact on the remedies

sought by the parties. In my view, this type of claim must be approached with great caution to ensure that the principles of natural justice and procedural fairness are respected for everyone (*Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817).

[154] Adding such a substantial remedy with such a big impact in the final arguments without the Respondent having had an opportunity to review it raises serious concerns in respect of procedural fairness and compliance with the principles of natural justice. It should also be mentioned that Ms. André did not request this type of remedy be it in her Statement of Particulars or at the hearing.

[155] These reasons are sufficient for the claim to be rejected.

[156] That said, the Tribunal must keep in mind that the goal when deciding on claims for remedies under the CHRA is to restore the innocent party to the position they would have been in had the injury not occurred (*Apotex Inc. v. Wellcome Foundation Ltd.*, 2000 CanLII 16720 (FCA), [2001] 1 FC 495, at paragraphs 120 and 121; *Willcott*, at paragraphs 277 to 282; *Nielsen*, at paragraph 188).

[157] In other words, the damages awarded must restore the person to the position they would have been in had the discrimination or damage not occurred (*Brooks v. Canada (Department of Fisheries and Oceans)*, 2005 CHRT 14, at paragraph 10; *Public Service Alliance of Canada v. Canada Post Corporation*, 2005 CHRT 39, at paragraphs 933 and 934 [*Alliance*]; *Canada (Attorney General) v. Morgan (C.A.)*, 1991 CanLII 8221 (FCA), at paragraph 19 [*Morgan*]). Straying from this goal would lead to an unjust enrichment and a parallel unjust impoverishment (*Alliance*, at paragraph 933).

[158] In the current circumstances, the evidence shows that the Complainant is continuing to receive benefits from the CNESST for her workplace accident. She confirmed that she receives \$935.63 every two weeks. A simple calculation shows that Ms. André receives \$24,326.12 a year in benefits. It is unknown how long the Complainant will continue receiving these benefits since she continues to undergo regular medical assessments.

[159] Neither the Commission nor the Complainant helped the Tribunal in its analysis of any future damages that could be awarded to Ms. André. There was almost no evidence or

submissions to establish the Complainant's future wage losses. The parties also did not deal with the issue of mitigating future damages, and did not persuade the Tribunal about Ms. André's expectation of future work. Yet the evidence does establish that Ms. André worked as a housekeeper in 2018, thereby augmenting her income.

[160] Although the Tribunal is very sensitive to Ms. André's situation and to the particular conditions she finds herself in, including the fact that she lives in a northern Indigenous community where work is scarce and where the main employer is the Nation itself, the evidence is insufficient. What has been presented does not allow the Tribunal to establish whether damages for future wage losses should indeed be awarded, and if so, how much and on what basis. The onus was on the party claiming the damages to establish the causal connection (*Chopra*, above).

[161] Accordingly, the Tribunal cannot allow this claim given the lack of proof on a balance of probabilities.

(iii) NBP reimbursement

[162] Ms. André is also claiming the reimbursement of her NBP in the amount of \$21,552.14 as a personal remedy.

[163] She explained to the Tribunal that, after her employment was terminated, she had to rely on employment insurance to cover part of her living expenses. However, the employment insurance benefits were insufficient to cover her expenses, such as rent, electricity and food. She also stated that in comparison to elsewhere in Quebec, the cost of living in her community is high.

[164] Ms. André specified that Employment and Social Development Canada had claimed money from her for the employment insurance overpayment and that she had had to repay that debt. The withdrawal from her NBP was allegedly used to repay part of those amounts.

[165] Here, too, the Tribunal finds itself in a difficult position since the evidence has several shortcomings.

[166] First, although Ms. André's testimony is credible, the only other evidence that supports the NBP withdrawal is a 2018 statement from the Quebec government, which establishes the withdrawal amount at \$21,552.14.

[167] That said, the Tribunal also determined that in 2018 Ms. André received \$24,706.30 in wages and \$6,442.00 in employment insurance benefits. Part of Ms. André's income came from the wages she earned working as a housekeeper. Thus, if one considers all sources of income, she made a total of \$31,148.30 in 2018, which, based on the evidence, is quite close to her annual pay of \$32,011.20 when she was a fitness room attendant.

[168] Ms. André explained that she had had to reimburse money to the Employment Insurance Commission in 2018 and that she had had used the NBP for this. However, the Tribunal did not receive in evidence the specific amounts that were reimbursed to the Employment Insurance Commission in 2018 or the proportion of the money from her NBP that was used for this reimbursement. The evidence also does not establish whether the money Ms. André withdrew from her NBP was included in the calculation of her income for 2018.

[169] Some of the evidence filed by Ms. André is irreconcilable, and the Tribunal cannot rely on the evidence presented at the hearing to draw specific inferences about the NBP withdrawal.

[170] Finally, the Tribunal accepts Ms. André's testimony explaining that 2018 was a particularly difficult year for her financially. The Tribunal is very sensitive to that situation, which it may take into account when assessing the damages for pain and suffering and the special compensation, as appropriate.

[171] Otherwise, the onus is on the party claiming damages to demonstrate the causal connection to the discrimination (*Chopra*, above). The Tribunal cannot allow the Complainant's claim given the lack of proof on a balance of probabilities.

B. Damages for pain and suffering (paragraph 53(2)(e) of the CHRA)

[172] Ms. André is claiming the maximum amount of \$20,000.00 for the pain and suffering resulting from Mr. Pilot's harassment and the adverse treatment she experienced during her employment under paragraph 53(2)(e) of the CHRA.

[173] Generally speaking, the Tribunal has historically exercised its discretion in the adjudication of damages and awarded the maximum amount allowed under the CHRA, \$20,000.00, for the most blatant, striking, or even the worst cases of complaints (*Premakumar v. Air Canada*, T.D. 03/02, April 4, 2002; *Duverger*, at paragraph 272). In addition, as has been noted several times in this decision, the claimant must demonstrate the causal connection between the damages claimed and the discriminatory practice (*Chopra*, above).

[174] Damages for pain and suffering are intended to compensate the victim, to the extent possible, for the pain and suffering they have experienced as a result of the discrimination, including any harm to their dignity (*Nielsen*, at paragraph 42; *Beattie and Bangloy v. Indigenous and Northern Affairs Canada*, 2019 CHRT 45 (CanLII), at paragraph 206 [*Beattie and Bangloy*]; *First Nations Child & Family Caring Society of Canada et al. v. Attorney General of Canada (representing the Minister of Indigenous and Northern Affairs Canada)*, 2019 CHRT 39 (CanLII), at paragraph 223).

[175] The Tribunal needs little convincing that Ms. André experienced pain and suffering as a result of the discrimination she suffered.

[176] Because of the harassment she experienced while being supervised by Mr. Pilot, the Nation's inaction and the adverse treatment she received, Ms. André developed significant mental health problems that affect her every day.

[177] The various medical documents filed in evidence as well as the reports from the Complainant's psychologists provide specific details of the consequences and the effects on her life. Ms. André was first diagnosed with adjustment disorder with depressed mood and generalized anxiety and later with post-traumatic stress disorder.

[178] Here are Ms. André's numerous symptoms again: distress, sadness, recurring fatigue, loss of appetite, attention and concentration problems, insecurity, low self-esteem and self-deprecation, insomnia, nocturnal awakenings, hopelessness, loss of interest and even suicidal thoughts.

[179] At the hearing, the Tribunal was also able to see the effects of the harassment and discrimination experienced by Ms. André. She sometimes had trouble concentrating, lost focus and experienced dips in energy. In addition, Ms. André's testimony at the hearing was sincere and emotional. When she told her story and talked about the events surrounding her complaint, she was very tearful at times and had to ask for breaks to compose herself.

[180] Ms. André explained that even the people around her—her family—have told her that they do not recognize her and that she is not who she was before the events. She does not even recognize herself. She explained to the Tribunal that she would like to go back to the way she was before the events took place.

[181] The Tribunal heard a woman who was discouraged and sad but also angry because she had asked for help and support from the Nation, but none was given.

[182] She does not understand why the Nation took so long to abolish her position when she was struggling financially. She begged the Council for help in August 2017. When the abolition of her position was confirmed, her troubles were not resolved because she had to deal with the errors made by the Nation in her records of employment. She had to manage this situation when she should have been taking care of herself.

[183] Ms. André also found herself in a difficult and precarious financial situation when her insurance provider stopped paying her disability benefits and the CNESST initially refused her claim for worker's compensation benefits. Ms. André had to wait until January 2019 for that situation to be resolved. In the meantime, her struggle to regain control over her life was compounded by financial stress.

[184] In addition, Ms. André testified about the frustration she felt when the Nation's chief met with her parents to tell them about the situation and her condition. Ms. André saw this as a violation of her privacy since she had always made sure to not worry her parents with

her personal problems. When the Complainant spoke about her parents and the Chief's interference, she was very tearful. The Tribunal can tell how much respect Ms. André has for her parents, who are community Elders.

[185] Ms. André's distress and helplessness are palpable and corroborated by both the exhaustive documentary evidence presented to that effect and the content of her testimony at the hearing.

[186] Mr. Pilot's actions destroyed Ms. André and caused her to suffer from major mental health problems, as was also determined in the administrative judgment of Mr. Louis of the Tribunal administratif du travail. The Respondent's inaction and adverse treatment, including the termination of the Complainant's employment, added to the harassment she experienced and did not help improve her health in any way.

[187] The pain and suffering are clear to the Tribunal, and it does not need any more convincing of the causal connection between Ms. André's pain and suffering and the discriminatory practices (*Chopra*, above).

[188] Given the seriousness of the events and the significant effects on the mental health of the Complainant, who, even at the time of the hearing, was still suffering from the consequences of the harassment and discrimination, the amount of \$17,000 is fully justified in the circumstances (paragraph 53(2)(e) of the CHRA).

C. Special compensation (subsection 52(3) of the CHRA)

[189] Regarding the special compensation, Ms. André is claiming the maximum amount of \$20,000.00 for reckless or wilful discriminatory practices under subsection 52(3) of the CHRA.

[190] In *Cassidy v. Canada Post Corporation and Raj Thambirajah*, 2012 CHRT 29 (CanLII), at paragraph 192, the Tribunal wrote the following:

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.

That said, aggravating (as opposed to punitive) and mitigating factors are relevant to the award of compensation. The remedy must be reasonable and have a nexus or causal link to the discriminatory practice found to have occurred.

[191] In addition, 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 (CanLII), members Sophie Marchildon, Réjean Bélanger and Edwards P. Lustig wrote the following at paragraph 22:

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).

[192] This reasoning was also referred to in *Duverger*, at paragraph 293, *Beattie and Bangloy*, at paragraph 209; and *Willcott*, at paragraph 231. It should be added that, when the Tribunal decides whether or not to award special compensation, it analyzes the Respondent's actions, not the effects of those actions on the victim (*Beatti and Bangloy*, at paragraph 210).

[193] In this case, the Tribunal finds that Ms. André is indeed entitled to special compensation not only because of Mr. Pilot's wilful actions but also because of the Nation's reckless ones.

[194] The evidence shows that Mr. Pilot was looking to get a reaction from Ms. André. Not only does the evidence show that he wanted to control the situation and his employee, Ms. André, but also that he intended to provoke, irritate and annoy her.

[195] For example, Mr. Pilot tried to change Ms. André's schedule without talking to her about it; this required intervention from the Nation, which disagreed with his decisions. Despite this, Mr. Pilot did as he pleased and changed the Complainant's schedule anyway. Ms. André described the schedule as [TRANSLATION] "impossible" given her work hours, and she knew that her supervisor had just wanted to provoke her.

[196] Mr. Pilot often used an authoritarian tone, yelling and banging on his desk or on doorframes. He prohibited Ms. André from going on the Internet, and when she complained about it to the Nation, the Nation confirmed that she was entitled to use the Internet for work. Mr. Pilot therefore changed tactics by carrying the Nation-owned router around with him, thereby making it impossible to access the Internet in the building. When he passed the Complainant holding the router, he looked at her, showed her the router, smiled and laughed.

[197] All of these elements support the conclusion that Mr. Pilot's actions were definitely wilful. The Tribunal may therefore order special compensation.

[198] In addition, the Tribunal finds that the Nation, Ms. André's employer, also acted recklessly. Indeed, the evidence shows that the Nation knew or ought to have known that the situation was getting worse between its employee and her new supervisor.

[199] Not only did Ms. André turn to the Council several times to discuss the various events, including the change in her work schedule and her Internet access, she also confided in two Council members about the problems she was experiencing and her psychological distress. However, no Nation representative asked to meet with Ms. André to find out more or to discuss the situation. The evidence also does not show that anyone met with Mr. Pilot to rectify the situation. On the contrary, Mr. Pilot's actions intensified, ultimately leading to Ms. André's going on sick leave.

[200] It is astonishing that the Respondent did nothing and did not see it necessary to speak with Ms. André in order to understand what was going on within the work environment. On the basis of the evidence before it, the Tribunal finds that the Council, the Council members and the Nation all turned a blind eye.

[201] In addition, it is even more surprising that the Nation did not feel the need to understand what was happening within the work environment when Ms. André went on sick leave in April 2017, barely three months after Mr. Pilot started in his role.

[202] The doctors' reports, which had been sent to the Nation as well as to Ms. André's insurance provider and which explained her absence from work, were abundantly clear. Not

only did the documents clearly set out the Complainant's health problems, but some of the doctors' reports specifically described the causes associated with her mental health problems.

[203] For example, the medical report prepared by Dr. Lafortune on May 9, 2017, around one month into Ms. André's sick leave, states that the psychosocial stressors were associated with [TRANSLATION] "psychological harassment at work". Dr. Lafortune also writes that there was [TRANSLATION] "extreme stress with employer" and that this could have an impact on her potential return to work.

[204] The Tribunal finds that the Respondent turned a blind eye and did not take Ms. André's situation seriously.

[205] Moreover, when Ms. André met with the Nation in the summer of 2017, her distress was not heard. Rather, the evidence shows that the Nation chose to tell her that her attendant position was going to be abolished. What followed was total confusion for Ms. André, caused by the toing and froing of the Nation, which alternated between telling her that her position was abolished or that it was not. The Nation even added to Ms. André's confusion by telling her that it was waiting for a new policy to take effect before terminating her employment because the policy was going to affect the compensation she would be entitled to. According to the Complainant's testimony, this compensation was going to be reduced in the new policy. She explained that she had therefore believed that the Nation was waiting for the new policy to be implemented in order to decrease her severance pay.

[206] Finally, the Tribunal finds that when the Chief, Mr. Ambroise, personally decided to meet with Ms. André's parents to inform them of the situation, even though Ms. André had always been protective of her privacy, the Respondent displayed further recklessness.

[207] Once again, it is surprising that the Nation's chief did not think it necessary to meet with Ms. André to understand the situation. The evidence shows that he witnessed Ms. André's despair and distress because she regularly came to see the Council to further her case and, in her own words, threw [TRANSLATION] "a fit" in a quest to resolve the situation. It was after that incident that Mr. Ambroise visited Ms. André's parents, yet he never saw it necessary to meet with Ms. André herself.

[208] The Tribunal needs no further convincing that the Nation acted recklessly in its adverse treatment of Ms. André.

[209] Given that the Nation is presumed to be responsible for the wilful actions of the supervisor, Mr. Pilot (subsection 65(1) of the CHRA), and that it is also responsible for the reckless actions of the Nation's chief and its council, the Tribunal finds that the amount of \$15,000 in special compensation is fully justified in the circumstances (subsection 52(3) of the CHRA).

D. Interest (subsection 53(4) of the CHRA)

[210] Ms. André has asked the Tribunal to award interest for the damages awarded under subsection 53(4) of the CHRA.

[211] In *Willcott*, at paragraphs 278 to 282, the Tribunal wrote the following about the awarding of interest:

[278] Interest is a component of the compensation process. The purpose of awarding damages is to restore the aggrieved person to where he or she should have been in the first place had the harm not occurred (see *Apotex Inc. v. Wellcome Foundation Ltd. [Apotex]*, 2000 CanLII 16270 (FCA), [2001] 1 FC 495, at paras. 120 and 121).

[279] In addition, 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.

(*Duverger v. 2553-4330 Québec Inc. (Aéropro)*, 2019 CHRT 18, at para. 318. The same idea is expressed in *Apotex*, above, at para. 122).

[280] The member of the panel has the discretion to award interest on damages and the amount granted (see *Brunskill*, above, at para. 168). Subsection 53(4) of the CHRA reads as follows:

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.

[Emphasis added]

[281] The Tribunal also has rules for calculating interest on damages. In that respect, Rule 9(12) of the *Rules of Procedure* (03-05-04) provides that:

9(12) 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.

[282] The combination of subsection 53(4) of the *CHRA* and Rule 9(12) of the *Rules of Procedure* clearly inform the parties that when they appear before the Tribunal, the member of the panel has the discretion to order interest on the compensation. They are also aware of the manner in which interest could be calculated and the date from which interest will accrue, that is, **the date on which the discriminatory practice occurred**, until the date of payment of the award of compensation.

[212] In my view, it is appropriate for the Tribunal to award interest in the circumstances in order to restore Ms. André, to the extent possible, to where she should have been in the first place had the Nation's discriminatory practices not occurred.

[213] Neither Ms. André nor the Commission specified the date from which they are claiming the award of interest. The Tribunal has the discretion needed to establish that date in accordance with the circumstances of the case.

[214] The administrative judge, Mr. Louis, determined that Ms. André's work accident occurred on April 4, 2017. This matches the evidence presented to the Tribunal. April 4, 2017, was the date on which Ms. André did not report to work because she was ill. It was the culmination of all the events that took place because of the harassment Ms. André had experienced at the hands of Mr. Pilot. In addition, the Tribunal has already determined that

the Nation knew or ought to have known that something was going on and that the work environment was unhealthy and toxic. Ms. André's going on sick leave on April 4, 2017, should have sounded the alarm that something was wrong.

[215] The Tribunal finds that April 4, 2017, is a central point in Ms. André's complaint, in respect of both the harassment (paragraph 14(c) of the CHRA) and the adverse treatment in the course of employment (section 7 of the CHRA). The Tribunal therefore finds that interest must accrue from that date (subsection 53(4) of the CHRA).

[216] In accordance with Rule 9(12) of the Tribunal's Rules, the interest shall be calculated as simple interest on a yearly basis at the Bank Rate (monthly series) established by the Bank of Canada from April 4, 2017, until the date of payment of the award of compensation ordered in this decision.

VIII. Public interest remedies (paragraph 52(2)(a) of the CHRA)

[217] The Commission is asking the Tribunal to order the Nation to cease the discriminatory practices and to take measures, in consultation with the Commission, to prevent the same or similar practices from occurring in future, under paragraph 52(2)(a) of the CHRA.

[218] More specifically, it is asking that the Nation provide it with its workplace harassment and accommodation policies so that it can review and comment on them. If the Nation has no such policies, the Commission is asking that the Nation prepare such policies in collaboration with the Commission. Finally, it is asking that the Nation provide human rights training to its managers, with an emphasis on workplace accommodation, harassment and violence.

[219] Since the Respondent did not take part in the Tribunal's proceedings, it is unclear whether it has policies on workplace harassment and discrimination, including the duty to accommodate.

[220] The Tribunal did, however, receive in evidence a very small portion of the Nation's policy on termination of employment and the compensation to be paid to employees. The

Tribunal therefore assumes that the Nation has some policies. Do these policies contain specific provisions on harassment, discrimination and the duty to accommodate? No findings of fact can be made from the evidence before the Tribunal.

[221] The Tribunal finds that, in the circumstances of this case, the Commission's request is justified and reasonable. The evidence before the Tribunal and the manner in which the Nation has managed the situation suggest that there are serious shortcomings in the Nation's administration and management. The Nation does not seem equipped to respond effectively to harassment and discrimination within its organization.

[222] The evidence shows, in fact, that the Respondent did not take any measures to deal with the problems between Ms. André and Mr. Pilot, to look into the situation, to investigate and to implement remedial measures to provide a harassment-free work environment. The evidence also shows that the Nation knew or ought to have known that Ms. André had developed mental health problems because of the actions of her supervisor and that it should have intervened. The Nation turned a blind eye and acted complacently in a type of situation that demanded proactiveness and action.

[223] Had the Nation intervened and implemented measures to stop the harassment, support Ms. André and, potentially, enable her to return to a work environment that accommodated her limitations, the situation may well have been different from the one described in this decision.

[224] Accordingly, the evidence supports an order instructing the Nation to cease discriminatory practices based on disability and sex. In addition, the Nation must, in consultation with the Commission, draft, create and implement one or more policies concerning harassment and discrimination in the workplace and the duty to accommodate. This must include clear and simple procedures or a mechanism for officially lodging complaints regarding workplace harassment and discrimination or reporting it. A mechanism for the Nation's administration to respond to and process such reports and complaints must also be put in place.

[225] If the Nation already has such policies, it must provide them to the Commission so that it can review them and provide its recommendations. The Commission must keep in mind that the policies must deal with the subjects mentioned in the previous paragraph.

[226] Once the policies are put in place, the Nation must provide all of its officers, directors, and agents, including Council members and the Chief, with training on the new policies, with a special focus on harassment and discrimination in the workplace, the duty to accommodate, the complaint and reporting mechanism, and the Nation's response and processing mechanism. This training must also be given to all of the Nation's employees.

[227] The Nation must provide all of its officers, directors, employees and agents, including Council members and the Chief, with copies of the new policies on harassment and discrimination in the workplace, the duty to accommodate, the complaint and reporting mechanism, and the Nation's response and processing mechanism.

[228] The Tribunal is aware of and sensitive to the fact that the reality of the community of the Matimekush-Lac John Nation Innu is intrinsically different from the realities of other communities in Quebec. The Tribunal takes judicial notice of the systemic and historical factors affecting First Nations (*R v. Williams*, 1998 CanLII 782 (SCC), [1998] 1 SCR 1128, cited in *Commission des droits de la personne et des droits de la jeunesse c. Blais*, 2007 QCTDP 11 (CanLII); *Willcott*, at paragraph 234; *Nielsen*, at paragraph 136).

[229] Although it does not give the Nation a free pass with respect to its obligations under the CHRA, the Tribunal must take the specific context of Indigenous communities and the difficulties they may encounter into account.

[230] The Tribunal therefore orders the Nation to implement the Tribunal's order regarding policies and training within 12 months of the date of this decision. The Tribunal considers this to be a reasonable and justified timeline in light of the circumstances of this case.

IX. Decision

[231] For all these reasons, the Tribunal finds Ms. André's complaint to be substantiated and awards some of the remedies sought.

[232] The Tribunal orders the Respondent to pay Ms. André \$17,000.00 in compensation for pain and suffering under paragraph 53(2)(e) of the CHRA.

[233] The Tribunal orders the Respondent to pay Ms. André \$15,000.00 in special compensation under subsection 53(3) of the CHRA.

[234] The Tribunal orders that the interest on these two amounts be calculated as simple interest on a yearly basis at the Bank Rate (monthly series) established by the Bank of Canada from April 4, 2017, until the date of payment of the award of compensation ordered in this decision, under subsection 53(4) of the CHRA.

[235] The Tribunal orders the Respondent to cease its discriminatory practices based on disability and sex.

[236] In addition, the Tribunal orders the Respondent to draft, create and implement, in consultation with the Commission, one or more policies concerning harassment and discrimination in the workplace and the duty to accommodate, including procedures or a mechanism for officially lodging complaints regarding workplace harassment and discrimination or reporting it, and another mechanism for its administration to respond to and process such reports and complaints.

[237] If the Respondent already has such policies, it must provide them to the Commission so that it can review them and provide its recommendations; in this case, the Tribunal orders the Respondent to implement the Commission's recommendations.

[238] The Tribunal orders the Respondent to provide all of its officers, directors, and agents, including Council members and the Chief, as well as its employees with training on the new policies, with a special focus on harassment and discrimination in the workplace, the duty to accommodate, the complaint and reporting mechanism, and its administration's response and processing mechanism.

[239] The Tribunal orders the Nation to provide all of its officers, directors, employees and agents, including Council members and the Chief, with copies of the new policies on harassment and discrimination in the workplace, the duty to accommodate, the complaint and reporting mechanism, and its administration's response and processing mechanism.

[240] The Tribunal orders the Nation to comply with the orders regarding the policies, including training, within no more than 12 months from the date of this decision.

[241] The Tribunal does not retain jurisdiction.

Signed by

Gabriel Gaudreault
Tribunal Member

Ottawa, Ontario
February 18, 2021

Canadian Human Rights Tribunal

Parties of Record

Tribunal File: T2452/0920

Style of Cause: Marie-Renée André v Matimekush-Lac John Nation Innu

Decision of the Tribunal Dated: February 18, 2021

Date and Place of Hearing: January 13 and 14, 2021

By videoconference

Appearances:

Marie-Renée André and Martine Gagnon, for the Complainant

Giacomo Vigna and Daniel Poulin, for the Canadian Human Rights Commission