

**Canadian Human
Rights Tribunal**



**Tribunal canadien
des droits de la personne**

Citation: 2024 CHRT 100
Date: September 13, 2024
File No(s): T2646/2221

Between:

Frantz Saint-Jean

Complainant

- and -

Canadian Human Rights Commission

Commission

- and -

Canada Revenue Agency

Respondent

Decision

Member: Marie Langlois

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I. DECISION

[1] The Canadian Human Rights Tribunal (the “Tribunal”) dismisses the complaint of discrimination, harassment and systemic discrimination based on race, national or ethnic origin or colour filed by Frantz Saint-Jean with the Canadian Human Rights Commission (the “Commission”) on February 24, 2016.

[2] The Tribunal finds that the Complainant did not meet his burden of proof of demonstrating that he was a victim of discrimination, harassment or systemic discrimination. He failed to establish a *prima facie* case, that is, he failed to present sufficient evidence regarding the discrimination in the course of employment he is alleging. He also failed to demonstrate that he was a victim of systemic discrimination or of discriminatory harassment based on his race, national or ethnic origin, or colour.

II. OVERVIEW

[3] Mr. Saint-Jean is Black. He comes from Haiti but has lived in Quebec for 33 years. He is a member of a visible minority.

[4] Mr. Saint-Jean has worked at the Canada Revenue Agency (CRA) since 1998. He started his career in the CR-4 (Clerical and Regulatory) group at the Quebec Regional Contact Centre (QRCC) in Montreal. Between 1998 and 2003, he was promoted and held PM-1 and PM-2 (Program Administration) positions.

[5] From 2002 to 2005, he was a union representative. He supported his colleagues but did not manage grievances.

[6] In January 2004, he was promoted to a position at the MG-3 (Management Group) level, obtaining first an acting team leader position and then a permanent one. At that time, he was the only Black person occupying an MG-3-level position in his call centre.

[7] From 2012 to 2015, he finished school, obtaining a master’s in public administration from the École nationale d’administration publique (ÉNAP) [National School of Public Administration]. The CRA reimbursed part of his tuition fees.

[8] Between 2004 and 2019, he tried, but failed, to get promoted. He stayed in the MG-3 group.

[9] In 2019, he was promoted to an MG-5 position.

[10] Between 2019 and 2020, he was transferred to a senior officer position (level SP-8, Services and Programs Group).

[11] In 2020, he was transferred to an analyst/editor position at the Official Languages Office (level HR-05, Human Resources Group).

[12] On April 1, 2021, he was promoted to an MG-6 position (annual salary of \$132,427), as a revenue collection manager.

[13] In the complaint he filed with the Commission on February 24, 2016, which is now before the Tribunal, Mr. Saint-Jean submits that he has been discriminated against since 2004. In his opinion, the discriminatory conduct towards him started that year because of his race, national or ethnic origin, and colour. The discriminatory conduct explains why he was excluded from certain positions or assignments and why he had to wait for so long before being promoted.

[14] He also submits that he was subjected to discriminatory harassment by certain managers, namely, H  l  ne Binette (a manager at the Montreal Tax Services Office (TSO)) and Marie-Jos  e P  loquin (an assistant director at the Collections and Client Services Division).

[15] He adds that there is systemic discrimination at the Montreal QRCC.

[16] The CRA, however, is of the view that Mr. Saint-Jean's race, national or ethnic origin and colour have nothing to do with the management decisions made in his regard and that Mr. Saint-Jean was not discriminated against in the course of his employment. The CRA also refutes the harassment allegations, given that they were the subject of both an internal and an external investigation, neither of which demonstrated that Mr. Saint-Jean had been harassed. Moreover, it considers that the procedures and policies applied at the QRCC as

well as elsewhere at the CRA are actually designed to prevent systemic discrimination and generate statistics on the representation of visible minorities at the CRA.

III. ISSUES

[17] Mr. Saint-Jean alleges that he was discriminated against in the course of employment and harassed in matters related to employment because of his race, national or ethnic origin and colour, within the meaning of sections 7(b) and 14(1)(c), respectively, of the *Canadian Human Rights Act*, R.S.C. 1985, c. H-6 (CHRA). He also submits that the CRA uses practices described in section 10(a) of the CHRA, in that it pursues policies or practices that deprive or tend to deprive an individual of employment opportunities because of the individual's race, national or ethnic origin, or colour.

[18] The CRA argues that its staffing process, which includes employment equity principles, is free from discrimination since it is based on merit.

[19] Finally, the CRA submits that Mr. Saint-Jean's grievances and complaints were not decided to his satisfaction because they were unfounded, not because the procedures were discriminatory. The CRA has already responded to Mr. Saint-Jean through its internal procedures and argues that this could be considered similar to *res judicata*, that is, an issue that has been resolved definitively by a court of justice.

[20] The issues are as follows:

- A. Has Mr. Saint-Jean established a *prima facie* case of discrimination in the course of employment within the meaning of section 7(b) of the CHRA?
 - (i) Does Mr. Saint-Jean have one or more of the characteristics protected under the CHRA (prohibited grounds of discrimination)?
 - (ii) If so, did he experience an adverse impact in respect of his employment with the CRA?
 - (iii) If so, was he the victim of adverse differential treatment in the course of employment on the ground of his protected characteristics?
- B. Has Mr. Saint-Jean established a *prima facie* case of discriminatory harassment in matters related to employment within the meaning of section 14(1)(c) of the CHRA?

C. Does the CRA pursue policies or practices that deprive or tend to deprive individuals of any employment opportunities on the prohibited grounds of discrimination of race, national or ethnic origin, or colour within the meaning of section 10(a) of the CHRA?

[21] Before answering these questions, it is worth reviewing certain principles.

IV. LEGAL PRINCIPLES

[22] The prohibited grounds of discrimination listed in section 3(1) of the CHRA include race, national or ethnic origin, and colour.

[23] Differentiating adversely against an employee in the course of employment is a discriminatory practice under section 7(b) of the CHRA.

[24] Under section 14(1)(c) of the CHRA, it is also a discriminatory practice, in matters related to employment, to harass an individual on a prohibited ground of discrimination.

[25] Another discriminatory practice, under section 10(a) of the CHRA, is to establish or pursue a policy or practice that deprives or tends to deprive an individual of any employment opportunities on a prohibited ground of discrimination.

[26] The Complainant has the burden of establishing a *prima facie* case of discrimination for each of these discriminatory practices. A *prima facie* case is 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) [*Simpsons-Sears*] at para 28).

[27] The case law recognizes the difficulty in proving allegations of discrimination by direct evidence, given that discrimination is not a practice which one would expect to see displayed directly or overtly. The Tribunal must therefore consider all the circumstances to determine on a balance of probabilities whether there is discrimination or whether there is, as described in *Basi v. Canadian National Railway*, 1988 CanLII 108 (CHRT), the “subtle scent of discrimination”. In short, the Tribunal can draw an inference of *prima facie* discrimination when the evidence before it renders such an inference more probable than the other

possible inferences or hypotheses (Beatrice Vizkelety, *Proving Discrimination in Canada* (Toronto: Carswell, 1987) at 142. See also *Khiamal v. Canada (Human Rights Commission)*, 2009 FC 495 at para 60).

[28] To discharge their burden, a complainant has to generally show, on a balance of probabilities (*Quebec (Commission des droits de la personne et des droits de la jeunesse) v. Bombardier Inc. (Bombardier Aerospace Training Centre)*, 2015 SCC 39 at para 67 [*Bombardier*], that they have a characteristic protected under the CHRA, that they experienced an adverse impact with respect to their employment and that the protected characteristic (referred to as a “prohibited ground of discrimination” by the Act) was a factor in the adverse impact (*Moore v. British Columbia (Education)*, 2012 SCC 61 at para 33).

[29] In making their case, a complainant is not required to prove that the respondent intended to discriminate against them, given that, as the Supreme Court of Canada noted in *Bombardier*, some discriminatory conduct involves multiple factors or is unconscious (*Bombardier* at paras 40 and 41). The intent to discriminate is therefore not a governing factor. Rather, it is the result, the adverse effect, that is significant (*Simpsons-Sears* at paras 12–14).

[30] The Tribunal may therefore consider circumstantial evidence. That being said, evidence of discrimination, even if it is circumstantial, must nonetheless be tangibly related to the impugned decision or conduct (*Bombardier* at para 88).

[31] Moreover, as the Tribunal rightly noted in *André v. Matimekush-Lac John Nation Innu*, 2021 CHRT 8, when the Tribunal has to determine whether a complainant has met the burden of proof,

... 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 Tahí 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*]).

[32] In addition, it is not essential that the connection between the prohibited ground of discrimination and the impugned decision be an exclusive one, or a causal one, given that it will suffice if the prohibited ground played a role in the complained of decisions or conduct. In short, the evidence must establish that the prohibited ground of discrimination was a factor in the impugned decision (*Bombardier* at paras 45–52).

[33] As a result, it is sufficient if the complainant’s race, national or ethnic origin, or colour were one of the factors that influenced the decisions the respondent made in the course of employment (*A.B. v. Eazy Express Inc.*, 2014 CHRT 35 (CanLII) at para 16).

[34] If it is the case, once this proof of *prima facie* discrimination is established, the employer could justify its decision by showing, also on a balance of probabilities, that it flows from a *bona fide* operational requirement under section 15 of the CHRA. The burden of proof then shifts to the employer (*Peel Law Association v. Pieters*, 2013 ONCA 396 (CanLII) at para 67).

(i) Discrimination in the course of employment (section 7(b) of the CHRA)

[35] The Complainant raises section 7(b) of the CHRA, which reads as follows:

7. It is a discriminatory practice, directly or indirectly,

...

(b) in the course of employment, to differentiate adversely in relation to an employee, on a prohibited ground of discrimination.

7. Constitue un acte discriminatoire, s’il est fondé sur un motif de distinction illicite, le fait, par des moyens directs ou indirects :

[...]

b) de le défavoriser en cours d’emploi.

[36] To establish a *prima facie* case of discrimination within the meaning of section 7(b), the Complainant must therefore demonstrate that the Respondent differentiated adversely in relation to him in the course of employment and that there is a connection between, on

the one hand, the adverse differentiation and, on the other, a prohibited ground of discrimination under section 3 of the CHRA (*Bombardier* at para 52).

[37] Regarding refusal to hire or promote, the Tribunal stated as follows in *Turner v. Canada Border Services Agency*, 2020 CHRT 1 (CanLII) at para 54 [*Turner*]:

[54] Discrimination need only one factor in the respondent's decision not to hire or promote for a complainant to be successful under the Act. The Tribunal is tasked with discerning whether discrimination was a factor in failure to hire. To do so the Tribunal must consider all of the circumstantial evidence, make findings of fact and determine whether the inference that may be drawn from the facts support a finding of discrimination on the balance of probabilities. However, there has to be a nexus between the conduct under scrutiny and a prohibited ground of discrimination. The nexus can be inferred through the circumstantial evidence, but the inference of discrimination must be more probable than other possible inferences. In making the inference, the fact at issue must be proved by other facts. Each piece of evidence need not alone lead to the conclusion. The pieces of evidence, each by themselves insufficient, are combined to provide a basis for the inference that the fact at issue exists. The finding of discrimination by the Tribunal can be based upon circumstantial evidence as well as direct, anecdotal and statistical evidence. (see *Khiamal v. Canada*, 2009 FC 495 at paras 80–84 (*Khiamal*)).

[38] This statement, which concerned section 7(a) of the CHRA (refusal to employ or continue to employ), is just as valid when applying section 7(b) (adverse differentiation in the course of employment).

(ii) Discriminatory harassment (section 14(1)(c) of the CHRA)

[39] Regarding the issue of harassment, the CHRA states as follows in section 14:

14 (1) It is a discriminatory practice,

...

(c) in matters related to employment,

to harass an individual on a prohibited ground of discrimination

14(1) Constitue un acte discriminatoire, s'il est fondé sur un motif de distinction illicite, le fait de harceler un individu :

[...]

c) en matière d'emploi.

[40] To establish a *prima facie* case of discriminatory harassment within the meaning of section 14(1)(c), a complainant essentially must demonstrate that the behaviours or conduct they have complained about were (i) related to a prohibited ground of discrimination, (ii) unsolicited or unwelcome and (iii) persistent or serious enough to create a hostile or negative work environment that undermined their dignity (see *Bilac v. Abbey, Currie and NC Tractor Services Inc.*, 2023 CHRT 43 at paras 22 and following; *Morin v. Canada (Attorney General)*, 2005 CHRT 41 at para 246).

[41] In this case, the Tribunal will perform the same analysis of the issue of discriminatory harassment as in *Alizadeh-Ebadi v. Manitoba Telecom Services Inc.*, 2017 CHRT 36:

[163] Section 14(1)(c) of the CHRA makes it a discriminatory practice to harass an individual on a prohibited ground of discrimination in matters of employment. While the *CHRA* does not define the term “harassment” the Tribunal and the Courts have provided guidance with respect to the application of this term that are relevant to this case, including the following:

i. the conduct has to be unwelcome by the victim and related to a prohibited ground of discrimination that detrimentally affects the work environment or leads to adverse job related consequences for the victim;

Morin, supra.

ii. the gravamen of harassment lies in the creation of a hostile work environment which violates the personal dignity of the complainant;

Dawson v. Canada Post Corporation, 2008 CHRT 41 (“*Dawson*”).

iii. in certain circumstances a single incident may be enough to create a hostile work environment and in others some element of repetition or persistence is required. Accordingly, the nature of the conduct should be calculated according to the inversely proportional rule: the more serious the conduct and its consequences are, the less repetition is necessary; conversely, the less severe the conduct, the more persistence will have to be demonstrated;

Dawson, supra.

iv. harassment does not include expressions that are rude and offensive but not connected to a particular characteristic. Conduct can be offensive and based on personal circumstances, but not repetitive enough or serious enough to constitute harassment under the *CHRA*;

Morin, supra.

v. in determining whether the conduct is unwelcome, an objective standard must be applied based on what a reasonable person would perceive from the perspective of the victim;

Hill, supra.

vi. in assessing the “reasonableness” of the conduct at issue, the touchstone is the usual limits of social interaction in the circumstances. The following more specific factors are relevant in the determination: the nature of the conduct; the workplace environment; the pattern of prior conduct between the parties; whether the alleged harasser is in a position of authority over the complainant; and whether an objection has been made.

Hill, supra.

vii. by virtue of section 65 of the *CHRA* any act or omission committed by an employee of an association or organization, in the course of employment of said employee, shall, for the purposes of the *CHRA*, be deemed to be an act or omission committed by that association or organization. This remains the case unless the association or organization did not consent to the commission of the act or omission and exercised all due diligence to prevent the act or omission from being committed and subsequently, to mitigate or avoid the effect thereof;

viii. employers have an obligation to their employees to create and maintain a discrimination-free work environment and their duty of diligence exists once it becomes aware of an act that, by reason of its intrinsically offensive, humiliating or degrading character, would likely degenerate into harassment if it were subsequently repeated.

Dawson, supra.

ix. the existence of an anti-harassment policy itself is not enough to release the employer from all due diligence. There is a positive duty upon an employer to take prompt and effectual action when it knows or should know of the conduct in the workplace amounting to racial harassment and to avoid liability, the employer is obliged to take reasonable steps to alleviate, as best it can, the distress arising within the workplace and to reassure those concerned that it is committed to the maintenance of a workplace free of racial harassment.

Hinds v. Canada, 1988 CarswellNat 993.

[42] The Tribunal will take these criteria into account in its analysis of the evidence, below, to determine whether or not harassment has occurred.

(iii) Systemic discrimination (section 10(a) of the CHRA)

[43] Regarding systemic discrimination, section 10 of the CHRA states that it is prohibited, in the following terms:

10 It is a discriminatory practice for an employer, employee organization or employer organization

(a) to establish or pursue a policy or practice

...

that deprives or tends to deprive an individual or class of individuals of any employment opportunities on a prohibited ground of discrimination.

10 Constitue un acte discriminatoire, s'il est fondé sur un motif de distinction illicite et s'il est susceptible d'annihiler les chances d'emploi ou d'avancement d'un individu ou d'une catégorie d'individus, le fait, pour l'employeur, l'association patronale ou l'organisation syndicale :

a) de fixer ou d'appliquer des lignes de conduite;

[...].

[44] In the present case, the Tribunal must therefore analyze the evidence presented to determine whether the CRA's policies or practices deprive or tend to deprive Black people of any employment opportunities.

[45] The word "*annihiler*" in the French text of section 10 of the CHRA means, according to the dictionary, [translation] "to reduce to nothing, to render ineffective" (*Le Robert* online dictionary). However, in the English version of the CHRA, the standard seems a little more flexible since it refers to depriving or tending to deprive an individual of employment opportunities.

[46] The Tribunal finds that the English text is more consistent with the general scheme of the CHRA. Requiring an individual to prove that their employment opportunities have been "reduced to nothing" as a result of the employer's policies or practices, as in the French version, could have the effect of raising the standard of proof required under the English version, which is limited to proving that the policies or practices "deprived or tended to

deprive” the individual of employment opportunities. I find that the requirement under the English version is more in line with the case law on the issue.

[47] The Tribunal notes that, in *Dorais v. Canadian Armed Forces*, 2021 CHRT 13 at para 54 [*Dorais*], the concept of systemic discrimination emphasizes the most subtle forms of discrimination. It recognizes that long-standing social and cultural mores carry within them value assumptions that contribute to discrimination in ways that are substantially or entirely hidden and unconscious (citing *Public Service Alliance of Canada v. Canada (Treasury Board)*, 1991 CanLII 387 (CHRT) at 9).

[48] In *Dorais* (at para 55), the Tribunal also refers to paragraph 73 of its decision in *Emmett v. Canada Revenue Agency*, 2018 CHRT 23 (CanLII), in which it cited with approval *Commission des droits de la personne et des droits de la jeunesse c. Gaz métropolitain inc.*, 2008 QCTDP 24, aff'd 2011 QCCA 1201 [*Gaz métro QCTDP*]. At paragraph 36 of *Gaz métro QCTDP*, the Quebec Human Rights Tribunal defines systemic discrimination as [translation] “the cumulative effects of disproportionate exclusion resulting from the combined impact of attitudes marked by often unconscious biases and stereotypes, and policies and practices generally adopted without taking into consideration the characteristics of the members of groups contemplated by the prohibition of discrimination.”

[49] In *Young Worker v. Heirloom and another*, 2023 BCHRT 137, CanLII, at para 53 [*Young Worker*], the British Columbia Human Rights Tribunal points out that Canadian law recognizes that anti-Black stereotypes are a form of discrimination that continues to seep into our collective psyche, whether consciously or subconsciously. It cites decisions of the Court of Appeal for Ontario, the British Columbia Human Rights Tribunal, the Nova Scotia Human Rights Tribunal and this Tribunal (*R. v. Parks*, 1993 CanLII 3383 (ON CA); *Balikama obo others v. Khaira Enterprises and others*, 2014 BCHRT 107 [*Balikama*] at paras 585 and 586; *Turner* at para 49; and *Symonds v. Halifax Regional Municipality (Halifax Regional Police Department) (Re)*, 2021 CanLII 37128 (NS HRC) at paras 84 and 85).

[50] The British Columbia Human Rights Tribunal adds that the social context is inextricably tied to centuries of Black slavery, segregation, colonialism, and other gross inequalities founded on racism (*Young Worker* at para 53, citing *Balikama* at paras 474–

476; *Knights v. DebtCollect Inc.*, 2017 HRTO 211 at para 21; and *R. v. Morris*, 2018 ONSC 5186 at para 22 (reversed on other grounds in *R. v. Morris*, 2021 ONCA 680).

[51] There is another difference between the English and French versions of section 10 of the CHRA. In this regard, the Tribunal notes the comments it made in *Walden et al. v. Social Development Canada*, 2007 CHRT 56 (CanLII) at paras 97 and 98 [*Walden*] (affirmed by the Federal Court [2010 FC 490] and reversed by the Federal Court of Appeal on other grounds [2011 FCA 202] on judicial review):

[97] The French version of s. 10 refers to practices that deny or tend to deny “les chances d’emploi ou d’avancement d’un individu ou d’une catégorie d’individus”. When the French and the English versions of s. 10 are read together, one is led to the conclusion that the term “employment opportunities” refers to conditions which enable employment and the advancement of individuals in their employment.

[98] This interpretation is reflected in the Tribunal’s jurisprudence wherein the term “employment opportunities” has been used to refer to opportunities to transfer to another job (*Gauthier v. Canadian Armed Forces*, [1989] C.H.R.D. No. 3 T.D. 3/89); opportunities to do certain kinds of work that would enhance earnings and career potential (*O’Connell v. Canadian Broadcasting Corp.*, [1988] C.H.R.D. No. T.D. 9/88); training opportunities (*Green v. Canada (Public Service Commission)*, [1998] C.H.R.D. No. T.D. 6/98, reviewed on other grounds in: *Canada (Attorney General) v. Green* [2000] 4 F.C. 629 (T.D.)); and continued and uninterrupted employment (*Hay v. Cameco* [1991] C.H.R.D. No. 5 No. T.D. 5/91).

[52] I cite with approval paragraph 106 of the Tribunal’s decision in *Turner*:

[106] As human beings we are imperfect. Unfortunately, we are all subject to the possibility that we may form prejudicial feelings and attitudes towards other human beings who have different personal characteristics than we have-- not because of anything they have done but because of our conscious or unconscious acceptance of untrue negative stereotypes propagated over time about who they are. Section 7 of the Act is intended to ensure that people having the protected characteristics under the Act are not discriminated against in employment decisions that are made, whether intentionally, unintentionally, consciously or unconsciously, in whole or in part, because of their protected personal characteristics.

V. ANALYSIS

[53] The issues regarding discrimination in the course of employment and discriminatory harassment are addressed together in the following section.

[54] The Respondent raised the issue of the Tribunal's jurisdiction to rule on Mr. Saint-Jean's complaint. As the case law has established, the Tribunal has the power to perform its own analysis of the events covered by the grievances or complaints filed by Mr. Saint-Jean with the CRA. The findings of the various grievance levels, the preliminary investigation conducted by Ms. Proulx and the investigation conducted by Textus in no way replace the quasi-judicial inquiry and analysis that the Tribunal must conduct under the CHRA. The parties were given a full hearing on the complaint, and this decision is the result of an analysis of the evidence and the applicable law.

[55] The CRA raised a preliminary issue in its statement of particulars regarding the Tribunal's jurisdiction, but, at the hearing, counsel for the CRA correctly admitted that the Tribunal has concurrent jurisdiction in the matter at hand. Accordingly, there is no need to address this issue further.

A. DISCRIMINATION IN THE COURSE OF EMPLOYMENT AND DISCRIMINATORY HARASSMENT

[56] Has Mr. Saint-Jean established a *prima facie* case of discrimination in the course of employment within the meaning of section 7(b) of the CHRA? To answer this, it is necessary to determine whether he possesses one or more characteristics protected by the CHRA, whether he experienced an adverse impact with respect to his employment, and, if so, whether he was subjected to adverse differential treatment in the course of his employment on the basis of his protected characteristics.

[57] Has Mr. Saint-Jean established a *prima facie* case of harassment in matters related to employment within the meaning of section 14(1)(c)? To answer this, it is necessary to determine whether the behaviour or conduct complained of by Mr. Saint-Jean was related to a prohibited ground of discrimination, unsolicited and unwelcome, and persistent or serious enough to create a hostile or negative work environment that undermined his dignity.

(i) Does Mr. Saint-Jean have one or more characteristics protected under the CHRA?

[58] Race, national or ethnic origin, and colour are prohibited grounds of discrimination under section 3(1) of the CHRA. It is irrefutable that Mr. Saint-Jean has characteristics protected under the CHRA. He is black-skinned and originally from Haiti. He belongs to a visible minority. No one disputes this fact.

[59] Thus, the Tribunal finds that there are prohibited grounds of discrimination under sections 7(b), 14(1)(c) and 10(a) of the CHRA.

(ii) Was Mr. Saint-Jean the victim of an adverse impact in respect of his employment with the CRA?

[60] Mr. Saint-Jean points to a series of events that he claims have caused him to experience an adverse impact in respect of his employment. Among other things, he states that he held his MG-3 position without any promotion whatsoever for a period of 15 years, from 2004 to 2019. The CRA confirms that he maintained his MG-3 job level throughout this period without promotion.

[61] The Tribunal is of the view that the lack of promotion has certainly had an adverse impact on his employment. According to the evidence in the record, salary increases with job level. According to the information provided by the CRA at the hearing, the documents filed and its website, annual compensation increases from \$87,654 for an MG-3 to \$96,896 for an MG-4, to \$116,233 for an MG-5 and to \$132,427 for an MG-6 as of November 1, 2020. There is clearly a salary progression between the various MG job levels.

[62] Mr. Saint-Jean remained at the MG-3 level for 15 years. During that period, his MG-3 base salary rose from \$51,824 in 2004 to \$81,587 in 2019. However, had he been promoted to levels above MG-3, his salary would have risen much more significantly. Therefore, because he remained at the MG-3 level for 15 years, he did not benefit from a pay increase attributable to promotion from one level to the next.

[63] The Tribunal concludes that Mr. Saint-Jean suffered, at the very least, a financial loss in connection with his employment. In light of this conclusion, it is not necessary at this stage to analyze all of Mr. Saint-Jean's allegations. I will provide the full analysis while addressing the next issue.

[64] The Tribunal therefore finds that Mr. Saint-Jean has indeed suffered an adverse impact with respect to his employment with the CRA under section 7(b) of the CHRA.

(iii) Was Mr. Saint-Jean the victim of adverse differential treatment in the course of employment on the basis of his race, his national or ethnic origin or his colour?

[65] As seen above, it is sufficient that the protected characteristic or characteristics, in this case, Mr. Saint-Jean's race, national or ethnic origin, or colour, were a factor in the manifestation of the adverse impact in the course of employment to establish a *prima facie* case of discrimination in the course of employment within the meaning of section 7(b) of the CHRA. As for establishing a *prima facie* case of harassment, as seen above, the Tribunal must analyze the individual items of evidence and the evidence as a whole in light of the CHRA and the case law to determine whether there is a link between the impugned conduct and the prohibited grounds of discrimination.

[66] Mr. Saint-Jean submits that the events constitute discrimination based on his race, his national or ethnic origin and his colour, while the CRA argues that the decisions were made for management reasons having nothing to do with his race, national or ethnic origin, or colour.

[67] Mr. Saint-Jean also claims to have been subjected to workplace harassment by his managers in connection with these events.

[68] Having analyzed the record and for the reasons that follow, the Tribunal finds, on a balance of probabilities, that Mr. Saint-Jean's race, national or ethnic origin, and colour were not factors in the decisions made with respect to him by the CRA. The Tribunal also finds, on a balance of probabilities, that he was not subjected to harassment, as no link between

the conduct of his managers and his race, national or ethnic origin, or colour has been established.

[69] In his complaint filed with the Commission on February 24, 2016, and amended on June 8, 2016, and February 18, 2021, Mr. Saint-Jean states that the period of discrimination and harassment began in January 2004, when he was appointed team leader at the MG-3 level. At the hearing, he specified that the relevant period was from 2004 to 2019, the date on which he was promoted to the MG-5 level. In his statement of particulars, filed with the Tribunal on October 15, 2021, Mr. Saint-Jean refers to a series of events and circumstances supporting his allegations that he was not promoted between 2004 and 2019 because of his race, national or ethnic origin, or colour.

[70] The Tribunal lists these events and circumstances below:

- 1) 2003: Discriminatory comments
- 2) Temporary assignments
- 3) 2008: Middle Management Development Program (MMDP)
- 4) 2010: Exchange with Mr. Prévost
- 5) 2011: Team restructuring study
- 6) 2011: Late performance evaluation
- 7) January 2012: Office move
- 8) May 2012: Position with Finance Department of Laval Tax Services Office
- 9) June 2012: Position with Appeals Division of Montreal Tax Services Office
- 10) October 2012: Haiti project
- 11) April 2015: Reprimand
- 12) July 2015: Close scrutiny by Ms. Binette
- 13) April 2016: Disciplinary meeting
- 14) August 2016: Assignment to manage a different team
- 15) August 2016: Performance improvement plan

I will analyze each event in turn.

1) 2003: Discriminatory comments

[71] In his testimony, Mr. Saint-Jean described two incidents that occurred in 2003. First, somebody allegedly made racist comments during the announcement of the results of the team leader competition for which Mr. Saint-Jean had qualified. Second, Mr. Saint-Jean's manager allegedly told him not to apply for the permanent team leader position, saying that it was [translation] "not worth it." Mr. Saint-Jean applied anyway. He was not selected, and no explanation was provided to him.

[72] These incidents occurred in 2003. They are therefore prior to the period relevant to his complaint before the Commission, which covers the period from 2004 to 2019. I allowed Mr. Saint-Jean to relate the incidents in question at the hearing solely for the purpose of establishing the context.

2) Temporary assignments

[73] Mr. Saint-Jean testified that in 2006, Ms. Quan To, who had the same job level as he did, MG-3, became team leader of the team he wished to lead. Her MG-3 position was not yet permanent, while Mr. Saint-Jean's was. He is of the view that he had more experience than Ms. Quan To and should have been appointed. He added that permanent staff usually have priority over temporary staff.

[74] In 2006, Serge Tremblay promoted Ms. Carpentier to a team leader position from his pool even though she was not a permanent employee. Mr. Saint-Jean did not obtain the assignment and is of the view that this was an additional act of discrimination against him.

[75] In 2007, Mr. Saint-Jean applied for lateral transfers that he did not obtain, despite the references Serge Tremblay gave him.

[76] In 2009, Ms. Haddou, MG-5 manager of the pool, assigned a white employee with less experience than Mr. Saint-Jean to replace her while she was on vacation.

[77] Orel Raymond, who testified at the hearing, confirmed that, generally, employees with greater seniority were chosen to fill in for those higher up in the hierarchy.

[78] Manon Dubé, a retired CRA executive, was a manager at the Call Centre in Montreal. She was responsible for, among other things, training and staffing at the time of the alleged events. She was also an employment equity advisor. She explained that the merit principle guided decisions relating to staffing, promotions, transfers and other staff movements. Acting replacements are also determined on the basis of merit, not seniority. For several years, many employees competed for the few senior positions available. During these lean years, many employees had to wait for the promotions they wanted.

[79] The Tribunal finds that the evidence presented does not support the conclusion that race, national or ethnic origin, or colour had an effect on the staff movements of which Mr. Saint-Jean was unable to avail himself. This allegation alone is not sufficient to establish the case on a balance of probabilities when it is refuted, as in this case. Mr. Saint-Jean has alleged facts without proving them. He has argued that people with less experience than he obtained positions he desired. He has presented no concrete proof of these facts. The Tribunal agrees that it is not easy to prove differential treatment based on visible minority characteristics, but the evidence must still be tangible and sufficient to establish the case on a balance of probabilities, which is not the case here.

3) 2008: Middle Management Development Program (MMDP)

[80] Mr. Saint-Jean considers the fact that he was not selected to participate in a Middle Management Development Program (MMDP) as discriminatory. He filed the evaluation committee report of February 5, 2008. The report was prepared by the Public Service Commission of Canada's Personnel Psychology Centre. According to the report, applicant performance is assessed in relation to the performance expected at manager level in the federal public service. The evaluation is not made in comparison with other applicants or past applicants. In the chapter entitled [translation] "The Rating Process", it is written that [translation] "the final rating for each competency is based on an integration of the

behaviours demonstrated in all the exercises and reflects the consensus reached among the members of the evaluation team.”

[81] Mr. Saint-Jean’s evaluation shows that his performance was slightly above average in communications; within expectations in cognitive abilities, teamwork and interpersonal relations; slightly below average in behavioural flexibility and vision; and below expectations in action management. In the section entitled, [translation] “Determination of potential for development in the MMDP”, it is stated that Mr. Saint-Jean [translation] “demonstrates, at this time, a moderate to high potential to achieve the program objectives within a three-year period in the MMDP.” Recommendations are made for further development and for areas to consider for assignments.

[82] Manon Dubé, a retired CRA executive, was the manager responsible for training and staffing when Mr. Saint-Jean tried to join the MMDP. She explained at the hearing that to be included in the MMDP pool, applicants must demonstrate performance meeting or exceeding expectations for each of the skills. However, Mr. Saint-Jean’s 2008 results did not meet expectations for three skills: behavioural flexibility, vision and action management. This is why Mr. Saint-Jean was not selected for the MMDP.

[83] In 2009, Ms. Haddou affirmed that Mr. Saint-Jean was ready to undertake such a program. In 2010, Mr. Saint-Jean again attempted to register. Ms. Haddou supported his application. Mr. Saint-Jean submits in his statement of particulars that Ms. Binette intervened in 2011 to have his application withdrawn from the MMDP without any justification.

[84] In her testimony at the hearing, Ms. Binette refuted Mr. Saint-Jean’s allegation. She stated that she in no way opposed his application. She added that he had the potential to take on higher-level jobs.

[85] The Tribunal finds that Mr. Saint-Jean’s performance on the MMDP qualifying test was evaluated in 2008 in a manner than appears objective with respect to the predetermined criteria. He did not achieve sufficiently satisfactory results to succeed. According to the evidence, Mr. Saint-Jean did not re-enroll in the program in subsequent years. The Tribunal finds that, apart from alleging that Éline Binette had attempted to bar his way, which she

refuted during her testimony, Mr. Saint-Jean has not provided any evidence whatsoever that he was discriminated against in how the development program was applied.

4) 2010: Exchange with Mr. Prévost

[86] In August 2010, Mr. Prévost, a colleague from the revenue collection department in the Laval TSO who was also an MG-3, and Mr. Saint-Jean discussed the possibility of swapping positions, so that Mr. Saint-Jean would be assigned to the Laval TSO while Mr. Prévost took Mr. Saint-Jean's position at the Montreal QRCC.

[87] On August 25, 2010, Mr. Saint-Jean sent an email on this subject to his manager, Mr. Jones, with a copy to Ms. Binette. The same day, Mr. Jones sent a memo to all QRCC managers asking them to check whether a team leader from their unit would be willing to work in the Laval collections department for a year.

[88] Mr. Saint-Jean states that Mr. Prévost's manager did not make the same offer to his staff in Laval. He sees this as discrimination or harassment.

[89] On this issue, Ms. Péroquin, Assistant Director, testified that she knew that the Laval team leaders did not wish to move to Montreal, as she had discussed this with her Laval managers. There was therefore no reason to email a notice of interest to the other Laval team leaders. She did, however, suggest that Mr. Jones check to see whether other Montreal team leaders wished to come to Laval out of fairness for those who sometimes wished to leave Montreal for Laval.

[90] Moreover, Mr. Saint-Jean allegedly heard that Ms. Péroquin had told Ms. Binette in the following terms that she was opposed to Mr. Saint-Jean's coming to Laval: [translation] "Anyone but Saint-Jean." Mr. Saint-Jean sees this as discrimination and harassment towards him. Ms. Péroquin testified at the hearing that she had no objection to Mr. Saint-Jean's coming to Laval. Admittedly, she was reluctant, given that the managers (Mr. Dinh, Ms. Haddou and Mr. Tremblay) in Montreal had informed her of a number of shortcomings in Mr. Saint-Jean's performance, despite generally positive performance evaluations for the years 2006 to 2008.

[91] In fact, Mr. Saint-Jean did obtain the temporary transfer to Laval. Ms. Péloquin testified that she wanted him to demonstrate his potential. She stated that, when they met to discuss this, he appeared very enthusiastic about moving to Laval. In connection with any events relating to this issue, the Tribunal finds that Mr. Saint-Jean is relying on hearsay that the principal party involved refutes. This is not persuasive evidence.

[92] Finally, the temporary assignments were put in place, so that Mr. Prévost was assigned to Montreal and Mr. Saint-Jean to Laval in September 2010. The temporary transfer was scheduled to last one year, until September or October 2011. The temporary transfer was ultimately extended until May 31, 2012.

[93] Ms. Bachant, a manager in the Revenue Collection and Client Services Division in the Laval TSO, testified that her assistant had told her that when Mr. Saint-Jean's return to the Montreal QRCC was announced, the latter had been upset and had given her a threatening look. Mr. Saint-Jean refutes this. On the issue of the threatening look, the Tribunal finds that this is a matter of perception and hearsay that does not assist the Tribunal in deciding the issues before it. This evidence is therefore excluded from the analysis.

[94] On June 1, 2012, Mr. Saint-Jean returned to the Montreal QRCC against his will.

[95] Ms. Bachant explained that Mr. Saint-Jean had to return to the Montreal QRCC because his assignment to the Laval TSO was not permanent. It was simply a temporary and discretionary staffing measure, at the end of which Mr. Saint-Jean had to return to his previous home base, the Montreal QRCC. It was by no means a permanent transfer to the Laval TSO.

[96] In their testimony, Ms. Bachant and Ms. Péloquin added that at that time, certain services to citizens were being cancelled. This was during a period of government-imposed budget cuts that resulted in staff surpluses. Citizens could therefore no longer go to the Laval TSO to pay their taxes. The team in Laval of which Mr. Saint-Jean was the leader was disbanded, and reorganization was necessary.

[97] Moreover, Ms. Bachant specified that Mr. Saint-Jean's unsatisfactory performance in 2011–2012 was also considered in the decision.

[98] The Tribunal is of the view that Mr. Saint-Jean's return to the Montreal QRCC has nothing to do with discrimination based on his race, national or ethnic origin, or colour. Nor does it constitute harassment according to the criteria established by the case law cited above in this decision, particularly given the lack of a connection between the impugned conduct and Mr. Saint-Jean's race, national or ethnic origin, or colour. From the outset, the assignment was only temporary, and it was agreed and planned that Mr. Saint-Jean would return to Montreal after a year. Ultimately, Mr. Saint-Jean was able to benefit from an extension of more than six months of his temporary assignment. Furthermore, the testimony of Ms. Bachant and Ms. Péroquin has demonstrated that there was a surplus of team leaders. These explanations are credible. Naturally, Mr. Saint-Jean would have liked to remain permanently in his position in Laval for personal and family reasons, but Ms. Bachant and Ms. Péroquin made a management decision that falls within the organization's management authority. In the absence of evidence of discrimination or harassment, the Tribunal cannot intervene.

5) 2011: Team restructuring study

[99] Mr. Saint-Jean is also of the view that the fact that he was not invited to participate in the Laval TSO team restructuring study during the reorganization also constitutes discrimination or harassment.

[100] In a document filed at the hearing, Ms. Péroquin explained that she had instead chosen somebody who had already carried out this type of study.

[101] The Tribunal finds that nothing in the evidence demonstrates Mr. Saint-Jean's perceptions and claims, especially given that, once again, the choice of whether or not a person participates in such an exercise is a management decision.

6) 2011: Performance evaluation

[102] With respect to his performance evaluation, for the period of his temporary assignment to the Laval TSO, Mr. Saint-Jean considers it discriminatory and believes that it demonstrates harassment by Ms. Bachant and Ms. Péroquin. The form for the 2010–2011

period shows that in terms of core responsibilities, Mr. Saint-Jean achieved results that met all expectations. From an effective people management (EPM) perspective, the evaluation is satisfactory; he [translation] “achieved all or most of the EPM objectives.”

[103] For the 2011–2012 year, the overall assessment for core responsibilities indicates that his [translation] “results partially meet expectations” and that there are [translation] “gaps in performance results; improvement in performance required; plan put in place to address gaps.” Given the overall assessment for EPM, improvement is necessary. He [translation] “did not meet the EPM objectives. [He] did not demonstrate an ongoing ability to lead and to encourage the development of employees.”

[104] Ms. Bachant, who was his direct manager as of fall 2010, stated that the 2010–2011 evaluation was based on a period of about six months, from October 2010 to March 2011. For the 2011–2012 evaluation, Mr. Saint-Jean was under her responsibility for the entire period. She explained that throughout 2011–2012, she had kept notes in her personal notebooks on the 20 or so meetings she had had with Mr. Saint-Jean, as she did with all the other team leaders, in particular to ask him to correct errors or engage in follow-ups he had not yet completed or to remind him of his role as team leader, in which he was not engaging sufficiently. She stated that he should not have been surprised by his performance evaluation given the number of reminders and criticisms he had received throughout 2011–2012.

[105] As indicated above, Ms. Bachant kept notes about each of her meetings with Mr. Saint-Jean. The Tribunal sees nothing in the evidence to undermine the credibility of these notes, which were filed at the hearing. Ms. Bachant noted several performance issues that need not be revisited, since this is a prerogative of management, and the evidence shows neither discrimination nor harassment.

[106] Mr. Saint-Jean also complains that the performance evaluation form was given to him after June 2012, when it was due. Ms. Bachant explained that she had been unable to complete the evaluation in question in the time required because she had been on extended sick leave as of mid-May 2012 and had made a gradual return to work starting the following December. It was not until March 8, 2013, that Ms. Péroquin (Assistant Director of the

Revenue Collection and Client Services Division at the Laval TSO) provided Mr. Saint-Jean with the form. Regarding the date of receipt of the form, Mr. Saint-Jean sees the date on which he received the form as a discriminatory act, since only he and Ms. Dieumerci, who also belongs to a visible minority, did not receive their forms on time.

[107] Ms. Bachant explained that she had already completed Ms. Dieumerci's evaluation form when she went on sick leave and that the subsequent steps had been completed afterwards, so that her form was given to her in June 2012. However, because she had not had time to complete Mr. Saint-Jean's form before going on sick leave in mid-May 2012, she did it upon her return. The Tribunal cannot find that this was a discriminatory act towards Mr. Saint-Jean because the evidence shows that Ms. Bachant was on sick leave and benefitted from a gradual return to work until December 31. As soon as she returned, she completed the form, which then went through the steps until it was sent by Ms. Péroquin in March 2013. Ms. Bachant added that if Mr. Saint-Jean had remained at the Laval TSO, he would have been placed on a performance improvement plan given the gaps he had demonstrated in his job performance, but that because he was returning to the Montreal TSO, this was not appropriate, so no improvement plan was imposed on him at that time.

[108] The Tribunal accepts the explanations for the late filing of Mr. Saint-Jean's 2011–2012 performance evaluation. It therefore finds that there is no discrimination or harassment with respect to the performance evaluation.

7) January 2012: Office move

[109] Ms. Bachant explained at the hearing that she had asked the team leader of the collections sector rather than Mr. Saint-Jean to work overtime on Saturday, January 28, 2012, to participate in the office move from the ground floor to the second floor because, unlike Mr. Saint-Jean, that employee already had experience with such work. This explanation is persuasive. Mr. Saint-Jean has provided no evidence other than his perception that a discriminatory act was committed against him.

[110] Again, the Tribunal sees not even the slightest trace of discrimination or harassment in that decision.

8) May 2012: Position at Finance Department of Laval TSO

[111] While on temporary assignment at the Laval TSO, Mr. Saint-Jean applied for a team leader position (MG-3) in the Laval TSO's Finance Department. He was not chosen. On May 2, 2012, he filled out a form requesting individual feedback following the process. The form was filed at the hearing. The Tribunal finds that the section dealing with the reasons for the request for individual feedback was not filled out by Mr. Saint-Jean. However, in an email to Ms. Dubé dated May 3, 2012, he wrote that his questions would [translation] "revolve around the choice of placement criteria." A meeting was scheduled for May 15, 2012.

[112] Ms. Dubé explained at the hearing that the experience sought in applicants for this position needed to be recent and that a solid financial background was required because the sector had no technical advisors.

[113] The interview form, which specifies the number of points awarded for the various criteria and sections, was filed at the hearing. The Tribunal notes the weight, judging by the points allotted to it, given to the assessment of work experience in finance for, among other things, the functioning and operational development of financial services, the degree of involvement and impact in the sector and also the degree of complexity of the tasks in financial services.

[114] Mr. Saint-Jean writes in his statement of particulars that he successfully completed all of the steps in the process and that he was the highest-scoring, most experienced and best-educated applicant. He submits that the person selected lacked experience.

[115] Ms. Dubé countered that the person chosen, Mr. Carignan, had a great deal of experience in finance and was the one who, at the end of the selection process, had obtained the most points and, as a result, landed the position.

[116] The Tribunal finds that Mr. Saint-Jean's allegations are not supported by the evidence. In fact, the list of applicants includes the scores of each of the four applicants. According to this document, the person with the highest score was Mr. Carignan.

[117] It also bears mentioning that Mr. Saint-Jean's name does not appear on the list of applicants. No explanation was provided, either by Ms. Dubé or Mr. Saint-Jean, for why Mr. Saint-Jean's name does not appear.

[118] The Tribunal notes that the onus is on Mr. Saint-Jean to prove the facts on which he is relying to establish that he has been a victim of discrimination and harassment. Faced with contradictory evidence and given that the burden of proof lies with Mr. Saint-Jean, the Tribunal gives more weight to the testimony of Ms. Dubé, which is supported by documentary evidence. Mr. Saint-Jean has not provided any documentation supporting his position that the rejection of his application for the position in the Finance Department at the Laval TSO was discriminatory or constituted harassment.

9) June 2012: Position at Appeals Division at Montreal TSO

[119] Mr. Saint-Jean resumed his duties as team leader at the Montreal TSO in June 2012, under the supervision of Mr. Jones. He therefore sought the position in the Appeals Division of the Montreal TSO. He says he was the only one who met the selection criteria. He states that, after applying, the selection criteria were changed and the process was cancelled, so that three white colleagues exchanged roles to fill the position.

[120] According to the documents filed at the hearing, the position required applicants to have taken intermediate-level accounting courses and to have knowledge of the *Income Tax Act* (ITA), while knowledge of the Canada Pension Plan and Employment Insurance (CPP/EI) programs was considered an asset. As the position in question was to be supervised remotely, the person needed to have sufficient experience and autonomy. Ms. Binette and Ms. Dubé explained that the call for applicants was indeed cancelled. An exchange among three people was planned instead, with one person from the Appeals Division moving to the QRCC, one from the Revenue Collection Division moving to Appeals and one person from the QRCC moving to Revenue Collection. This exchange was expected to last one month and began in September 2012. The decisions were made by Ms. Miron (Director of the Montreal office), Ms. Binette and Ms. Dubé.

[121] The Tribunal does not have sufficient information on this issue to determine whether Mr. Saint-Jean's race, national or ethnic origin, or colour had any impact whatsoever on management's decision to favour a three-way exchange over a new call for applicants. Mr. Saint-Jean has not demonstrated that he possessed the required knowledge for the position or that the individuals selected had no more experience than he did. Beyond making an allegation, Mr. Saint-Jean has not provided any evidence.

10) October 2012: Haiti project

[122] In October 2012, Mr. Saint-Jean put his name forward for a partnership project with Haiti, but he was not selected. This was despite the fact that his manager at the Montreal TSO, Mr. Jones, had supported his application and sent an email to Ms. Binette on the subject. Mr. Saint-Jean testified that not receiving his performance evaluation in June 2012 hindered him in this process. He stated that the person selected, Mr. L'Archevesque, is white. He is of the view that the rejection of his application in favour of a white person constitutes discrimination against him and a form of harassment by Ms. Binette, who opposed his application.

[123] The project lead, Ms. Fuentes, explained at the hearing that the project came into being in the wake of the 2010 earthquake in Haiti. Canada signed an agreement with Haiti to provide on-site technical assistance with tax collection. In 2012, Ms. Fuentes sent a letter of interest to the directorates for distribution to their staff. The project involves a two-week mission, plus two weeks of preparation. Participants receive no additional pay and are temporarily seconded from their usual position. For the 2012 mission, Ms. Fuentes received between five and ten applications, including Mr. Saint-Jean's. She stated that nobody opposed Mr. Saint-Jean's application, neither Ms. Binette nor anybody else. Ms. Binette confirmed that she was not involved in the process.

[124] Ms. Fuentes testified that at the end of the selection process, the applicant ultimately chosen for this temporary assignment was Ginette Tins, a Black Haitian woman who possessed all the necessary qualifications, namely, the specific experience sought (program management, revenue collection, customer service and training), in addition to having a

broad vision of the functions. Ms. Fuentes confirmed that, contrary to Mr. Saint-Jean's allegation, she had never recruited Mr. L'Archevesque for the project. She added that Mr. Saint-Jean's missing performance evaluation had in no way worked against him. She preferred Ms. Tins because of her qualifications.

[125] The Tribunal finds, on a balance of probabilities, that the refusal of Mr. Saint-Jean's application did not have anything to do with his race, national or ethnic origin, or colour. In all likelihood, the successful applicant was chosen on the basis of her professional attributes and experience. Moreover, the person selected for the position was not a white male as claimed by Mr. Saint-Jean, but rather a woman belonging to the same visible minority as Mr. Saint-Jean. The Tribunal prefers the testimony of Ms. Fuentes, the person who made the decision and who is likely more familiar with the outcome of the selection process. Ms. Fuentes even testified that she herself was part of the Haiti delegation, making her testimony to the effect that it was Ms. Tins who was given the job entirely credible.

[126] Ms. Fuentes added that she called unsuccessful applicants and sent them each a letter afterwards.

[127] Ms. Fuentes therefore spoke with Mr. Saint-Jean to let him know that he had not been selected. He then made a further attempt to impress his experience upon her.

[128] Ms. Binette testified that Ms. Fuentes reported to her that Mr. Saint-Jean was condescending when she called him to inform him that his application had not been accepted. Ms. Binette informed Mr. Jones, who spoke to Mr. Saint-Jean about it and suggested that he call Ms. Fuentes back to clarify any misunderstanding, which Mr. Saint-Jean did. Mr. Saint-Jean stated that when he spoke with Ms. Fuentes, the latter told him that he had nothing to apologize for because his behaviour had not been unpleasant.

[129] Ms. Fuentes confirmed at the hearing that when she calls people to tell them they have not been selected, they are disappointed, but that she had no memory of Mr. Saint-Jean being unpleasant or condescending towards her.

[130] Mr. Saint-Jean denied that he had been condescending towards Ms. Fuentes, and Ms. Fuentes could not recall whether he had been. Ms. Binette reported what Ms. Fuentes

had told her, namely, that Mr. Saint-Jean had been condescending. Ms. Binette was not a direct witness to the comments; therefore, this is hearsay that does not carry any weight. Consequently, the Tribunal accepts Mr. Saint-Jean's version, that he was not unpleasant or condescending to Ms. Fuentes during the telephone call. However, this does not establish that Mr. Saint-Jean was a victim of discrimination or harassment.

11) April 2015: Reprimand

[131] At the hearing, Ms. Binette stated that Assistant Commissioner Beauséjour was informed in April 2015 that 27 external applicants had received letters of offer for the position of Taxpayer Services Agent. The letters stated that the applicants met the language requirements and would be entitled to a bilingual bonus; however, they had not yet been assessed for the language requirements.

[132] In her opinion, this was a major mistake because the very credibility of the hiring process was affected. Mr. Beauséjour asked Ms. Binette to investigate. Ms. Binette feared that she would lose her delegated hiring authority because of this mistake. She therefore consulted Mr. Jones and spoke to Mr. Saint-Jean and two of his employees involved in the competition at issue. Ms. Binette concluded that Mr. Saint-Jean, who had chaired the selection board and signed the letters, and Mr. Jones, his immediate supervisor, were responsible for the mistake and deserved a written reprimand.

[133] Mr. Jones stated at the hearing that he had a meeting with Mr. Saint-Jean about this. He told Mr. Saint-Jean that he had to relieve him of his position as selection board chair because of the mistake. To save face, he wrote a message to his team stating that Mr. Saint-Jean was stepping down from the position voluntarily. Mr. Jones also withdrew from the staffing function.

[134] Mr. Saint-Jean remained at the team leader level and was assigned to the new staffing chief's team leader position.

[135] Mr. Saint-Jean filed a grievance challenging the disciplinary measure, but the grievance was denied at the third level by Mr. Caponi, the assistant commissioner at the time. On June 27, 2017, the grievance was also denied at the final level by Mr. Couture,

Assistant Commissioner, Human Resources Branch, and Chief Human Resources Officer, CRA.

[136] Under the CRA's policy on discipline, reprimands are removed from the employee's file and destroyed after two years. Mr. Saint-Jean received confirmation of this by email in July 2017.

[137] The Tribunal views the reprimand and the removal from the position of selection board chair as management measures that had nothing to do with Mr. Saint-Jean's race, national or ethnic origin, or colour, and nothing to do with harassment. Mr. Jones also received a letter of reprimand and withdrew from the staffing function. These were management decisions that were justified in the circumstances. There is no evidence to support Mr. Saint-Jean's perception.

12) July 2015: Close scrutiny by Ms. Binette

[138] Mr. Saint-Jean also alleges that he was discriminated against and harassed when, in July 2015, Ms. Binette repeatedly went by his office and stared at him without saying anything. He claims that she was hovering around his office, watching him in an unusual way. He complains about Ms. Binette's micromanagement. He states that Mr. Jones told him that Ms. Binette has disliked him ever since he refused to organize the "*Bouchées des continents*" event at the last minute.

[139] At the hearing, Ms. Binette stated that she is a manager who works at the office. She manages 500 employees, 5 or 6 managers and 26 to 28 team leaders. The team leaders were divided into four groups, and she would walk around to make herself available to the staff, who were invited to ask her questions as she passed by their offices. She was not singling out Mr. Saint-Jean but wanted to be available to all the groups.

[140] One time, after Mr. Saint-Jean had finished his workday and had left, she was making the rounds and noticed a file lying on his desk, in violation of the confidentiality obligations under the *Income Tax Act*. Mr. Saint-Jean testified that Ms. Binette invented this story to discredit and harass him. He admitted to having once left a personal file on his desk but never a taxpayer's file.

[141] “*Bouchées des continents*” is an annual event presented by the Diversity Committee. Employees are invited to sign up and prepare dishes to share with co-workers. Ms. Binette had been in charge of this event for three or four years. Mr. Saint-Jean then volunteered to lead the committee. Under his leadership, “*Bouchées des continents*” did not take place. Ms. Binette was disappointed but, contrary to Mr. Saint-Jean’s statement, she did not dislike Mr. Saint-Jean or say such a thing to Mr. Jones. Mr. Jones stated that he did not remember Ms. Binette saying that she disliked Mr. Saint-Jean. He further stated that she had a harsh management style with everyone and would sometimes lash out at employees one by one, but no more so at Mr. Saint-Jean than at the others.

[142] Orel Raymond, who testified at the hearing, also stated that he sometimes went to Mr. Saint-Jean’s office on his breaks and saw Ms. Binette looking towards Mr. Saint-Jean’s office as she went around.

[143] It is not for the Tribunal to comment on Ms. Binette’s management style. What the evidence shows, however, is that there was no discrimination: Ms. Binette was keeping an eye on every employee. Although Mr. Saint-Jean feels personally targeted because of his visible minority characteristics, his perceptions are not supported by the evidence. The Tribunal finds no discrimination or harassment in this respect.

13) April 2016: Disciplinary meeting

[144] On April 6, 2016, Ms. Binette was informed by one of her managers, Ms. Perras, who had allegedly learned from one of the team leaders, Ms. Ferdoussi, that Mr. Saint-Jean had left the office during normal working hours to go to a soccer game without having obtained prior permission. The team leader making the accusation complained that she again had to answer questions from Mr. Saint-Jean’s team members while he was away. Ms. Binette therefore contacted Ms. Mussali, Mr. Saint-Jean’s manager at the time. Ms. Mussali responded that Mr. Saint-Jean had written her an email stating that he was leaving early to pick up his son from school.

[145] Ms. Binette asked Ms. Mussali to request supporting documentation from Mr. Saint-Jean. Mr. Saint-Jean provided the school's regular timetable, which Ms. Binette considered insufficient.

[146] Mr. Saint-Jean was called to a disciplinary meeting on April 6, 2016, regarding his unauthorized absence.

[147] Mr. Saint-Jean argues that he was called to a disciplinary meeting, whereas his white male colleague Igor, who was at the soccer game, was not.

[148] At Ms. Binette's request, Mr. Jones arranged a disciplinary meeting with representatives from Human Resources. At the meeting, the facts were set straight, and no disciplinary measures were imposed on Mr. Saint-Jean. This was confirmed in a letter dated August 24, 2016.

[149] In the meantime, for approximately one month, Mr. Jones monitored when Mr. Saint-Jean arrived at the office and left the office. Having found nothing unusual, Mr. Jones stopped systematically checking Mr. Saint-Jean's work hours.

[150] The evidence does not support the allegations made by Mr. Saint-Jean, who believes that he was being attacked because of his visible minority characteristics. His colleague Igor had in fact obtained prior permission from his manager to go to the soccer game, whereas Mr. Saint-Jean had not obtained permission before leaving the office, regardless of the fact that he was leaving for a reason other than the soccer game. Managers may check when staff members are absent, when they arrive and leave, and when they are at the office. Mr. Saint-Jean objects to Ms. Binette's management style. The Tribunal finds that the evidence fails to show that Ms. Binette did what she did because of Mr. Saint-Jean's race, national or ethnic origin, or colour. Mr. Saint-Jean's perceptions are not supported by the evidence.

14) August 2016: Assignment to manage a different team

[151] Mr. Saint-Jean went on sick leave on April 6, 2016. When he returned from sick leave in August 2016, Mr. Saint-Jean was assigned to a different team than the one for which he had been team leader before his sick leave.

[152] Ms. Binette stated that, after a short-term absence, that is, less than one month, a team leader usually returns to their original team, to ensure team stability. For longer absences, the team leader is assigned to whichever team is available at the time.

[153] In this case, Mr. Saint-Jean was on leave for more than four months, and his return to work was gradual.

[154] Mr. Saint-Jean considers this to be discrimination or harassment, pointing out that another white team leader, Ms. Bucci, was able to return to her team after having been away. However, Mr. Jones stated that Ms. Bucci had been away for less than a month, contrary to Mr. Saint-Jean's testimony regarding Ms. Bucci's absence.

[155] The Tribunal prefers the testimony of Mr. Jones on this aspect because he is the manager responsible for assigning teams and, in all likelihood, he is better informed than Mr. Saint-Jean about the lengths of his team members' absences.

[156] Here again, the Tribunal finds that the facts put forward by Mr. Saint-Jean regarding the difference in treatment compared with Ms. Bucci are not persuasive. Accordingly, the Tribunal does not find any discrimination or harassment against Mr. Saint-Jean with respect to his assignment when he returned from sick leave in late August 2016.

15) August 2016: Performance improvement plan

[157] When Mr. Saint-Jean returned from sick leave in August 2016, Mr. Jones presented him with a performance improvement plan. Mr. Jones wrote: [translation] “There are deficiencies in how Frantz manages his team; he must ensure that he manages his team closely, in detail, and comprehensively, and that all his employees are supported at all times.” Mr. Saint-Jean objected to the performance improvement plan, and it was ultimately withdrawn. He felt humiliated and discriminated against.

[158] The Tribunal considers that Mr. Jones used his good judgment as a manager and withdrew the performance improvement plan at Mr. Saint-Jean’s request. The Tribunal finds no discrimination based on Mr. Saint-Jean’s race, national or ethnic origin, or colour. Obviously, Mr. Saint-Jean did not like the proposed performance improvement plan, but that does not demonstrate that the plan had been created because of Mr. Saint-Jean’s protected characteristics.

(iv) Conclusion regarding discrimination in course of employment and discriminatory harassment

[159] The Commission submits that unconscious bias may have played a role in the CRA’s decisions regarding Mr. Saint-Jean.

[160] As the Human Rights Tribunal of Ontario rightly states in *Logan v. Ontario (Solicitor General)*, 2022 HRTO 1004 at para 92 (see also *R. v. Spence*, 2005 SCC 71 at paras 56–58 and *Peart v. Peel Regional Police Services*, 2006 CanLII 37566 (ONCA)), unconscious bias and the social context, on their own, are not enough to prove that discrimination actually occurred in a given situation.

[161] The social context is not *prima facie* evidence of discrimination. As stated in *Commission des droits de la personne et des droits de la jeunesse (Mensah) c. Ville de Montréal (Service de police de la ville de Montréal)*, 2018 QCTDP 5 at paragraph 94 [*Mensah*], the social context may only be used as a background. On its own, it can never constitute *prima facie* evidence that a discriminatory act was committed. A tangible connection must be established between the circumstantial evidence of discrimination and

the impugned decision or conduct. Moreover, the Supreme Court states the following in *Bombardier* (at para 88):

[88] It cannot be presumed solely on the basis of a social context of discrimination against a group that a specific decision against a member of that group is necessarily based on a prohibited ground under the *Charter*. In practice, this would amount to reversing the burden of proof in discrimination matters. Evidence of discrimination, even if it is circumstantial, must nonetheless be tangibly related to the impugned decision or conduct.

[162] The Supreme Court of Canada has stated that the courts may take judicial notice of the fact that there is anti-Black racial prejudice in Canadian society (*R v. S. (R.D.)*, 1997 CanLII 324 (SCC), [1997] 3 SCR 484 at para 46). However, on its own, judicial notice of anti-Black prejudice cannot compensate for a lack of compelling evidence that there was discrimination in a given situation (*Mensah* at para 100).

[163] Note that Mr. Saint-Jean's burden of proof required that he establish a *prima facie* case of discrimination. Although this is *prima facie* evidence, the degree of proof required remains that of a balance of probabilities.

[164] In short, the Tribunal finds that Mr. Saint-Jean has failed to prove the facts that he is alleging in this case. On a balance of probabilities, the evidence does not support the facts on which he is relying to show that he experienced discrimination or harassment. The CRA has presented evidence rebutting Mr. Saint-Jean's allegations of discrimination and harassment. The Tribunal has analyzed the probative value of the testimony given by Ms. Dubé, Ms. Péloquin, Ms. Bachant, Ms. Fuentes, Ms. Binette, Mr. Jones and Ms. Proulx. I consider it more likely than not that this testimony, as well as the documentary evidence analyzed, disproves Mr. Saint-Jean's allegations that he experienced discrimination and harassment because of his race, national or ethnic origin, or colour. The preponderant evidence accepted by the Tribunal contradicts Mr. Saint-Jean's version of the facts, on which he is relying to establish discrimination and harassment.

[165] The items of evidence provided, whether taken individually or in combination as a whole, are insufficient to establish that the CRA differentiated adversely in relation to Mr. Saint-Jean or that he was harassed on a prohibited ground of discrimination, namely his race, national or ethnic origin, or colour.

[166] Consequently, the Tribunal concludes that Mr. Saint-Jean has failed to meet his burden of proof. The Tribunal dismisses his complaint in this respect. He has not established a *prima facie* case of discrimination in the course of employment. He has also failed to demonstrate that he was a victim of discriminatory harassment.

B. SYSTEMIC DISCRIMINATION

[167] In addition to the events described in the previous section, Mr. Saint-Jean claims to have been the victim of systemic racism through staffing practices, grievance procedures, internal investigation procedures and external investigation procedures carried out by Textus.

[168] Mr. Saint-Jean submits that the CRA's policies and practices with respect to grievance management, complaint management and promotions discriminate against him on the basis of race, national or ethnic origin, and colour and that they constitute systemic discrimination. He presented evidence from Mr. Expérience, Mr. Raymond, Mr. Thaverne, Mr. Villiers and Ms. Ligondé.

[169] The Commission argues that unconscious bias is indeed present in staffing processes and the management of grievances and complaints.

[170] Basically, the CRA submits that the reason Mr. Saint-Jean's grievances and complaints were not decided to his satisfaction was that they were unfounded and not that the procedures were discriminatory. The CRA states that it is already fully committed to creating a work environment that is respectful, inclusive and free from systemic discrimination.

[171] To establish systemic discrimination, Mr. Saint-Jean must demonstrate that the CRA established or pursued policies and practices that deprived or tended to deprive him of any employment opportunities on a prohibited ground of discrimination under section 10(a) of the CHRA.

(i) Evidence from Mr. Expérience, Mr. Raymond, Mr. Thaverne, Mr. Villiers and Ms. Ligondé

[172] Mr. Expérience testified at the hearing at the request of Mr. Saint-Jean. He has been employed by the CRA since 1996. Mr. Expérience belongs to the same visible minority as Mr. Saint-Jean. He never worked in the same sector as Mr. Saint-Jean. He stated that he took part in a promotional competition in 2017. Seven candidates were successful. He was the only Black person not to be appointed to a permanent position following the competition. He told Ms. Dubé, who acknowledged that he had not been treated fairly. Steps were taken, and Mr. Expérience obtained a permanent position with retroactive payment. He did not file a formal grievance or complaint in this regard.

[173] Mr. Expérience also stated that he knew a Black person who was qualified and in a pool of MG-5 candidates, but it was a white person who was selected. The Black person filed a complaint and was ultimately selected.

[174] The Tribunal finds that the employer resolved Mr. Expérience's situation which, on its face, appears to have been unfair. The fact that another Black person had a similar experience and that his situation was resolved after he made a complaint shows that, although the process was at fault, it was also corrected. It cannot be inferred from these situations that the promotion policies or practices in these competitions deprived or tended to deprive Mr. Expérience or any other person of a promotion on the grounds of race, national or ethnic origin, or colour. Although it is true that two unfair situations arose, the employer corrected them when it became aware of them.

[175] In 2020, during the consultations leading up to the report *Taking Action Together: Diversity, Inclusion and Anti-Racism at the CRA*, which will be discussed below, Mr. Expérience made Assistant Commissioner Beauséjour aware of the difficulties Black people face in seeking promotions.

[176] Mr. Raymond testified at the hearing at the request of Mr. Saint-Jean. He also has dark skin. He has been employed by the CRA since 2002. He complained of discrimination when he was assigned to the Montreal TSO. He watched as white colleagues trained by him were promoted ahead of him.

[177] He took part in the Employment Equity Committee but saw nothing concrete come out of it.

[178] After he joined Headquarters in Ottawa, he found that there were more opportunities for promotion and advancement. In Ottawa, the office atmosphere was more pleasant, and people ate lunch together. He felt that his skills were recognized, unlike what happened at the Montreal TSO.

[179] Mr. Thaverne also testified at the hearing, at Mr. Saint-Jean's request, as a member of the Black visible minority group working at the CRA. He has been employed by the CRA since 1997 but took one year of unpaid leave in 2011–2012. He started at the CR-4 level, was promoted to SP-3, then SP-4 in 1999, SP-5 in 2018 and finally SP-7 after a transfer to Headquarters in Ottawa in 2022. He stated that he could not obtain any acting positions and believed that this was because he has dark skin. He further stated that, in 2018, having accumulated 10 years' experience and reached the SP-4 level, he competed for a promotion to an SP-5 position in the Brossard office. He passed the exam, as did two of his colleagues. His score was 70%. His colleague with 15 years' experience scored 75%, and his colleague with 2 years' experience, 72%. The manager of the Brossard office told him that the other two applicants had been selected but, if one of them declined, he would be offered the position. He then obtained an SP-5 position at the Laval TSO. Mr. Thaverne also stated that he had heard racist remarks using the "n" word once in 1997. He did not file a complaint or grievance or report the incident to his manager.

[180] Mr. Thaverne stated that, between 2000 and 2004, some colleagues would go to the pub after work. One of them remarked that Mr. Thaverne was a Québécois but implied that Mr. Saint-Jean was [translation] "too Haitian" to be a Québécois. Mr. Thaverne considered the atmosphere at Headquarters in Ottawa much better: [translation] "It was like night and day." He felt valued. He was invited to participate in a management training program. After 15 months, he was promoted to SP-7.

[181] Mr. Villiers also testified at the request of Mr. Saint-Jean. He has been employed by the CRA since 2001. He began his career at the SP-4 level, became an SP-5 in 2005, an SP-6 in 2012 and an SP-7 in 2014, and then transferred to Headquarters in Ottawa in 2018.

After two years of being overwhelmed with work, he asked to go back to being a technical advisor. He felt that people were being singled out for easier access to permanent positions. He stated that people who arrived at the Montreal TSO after him and who had not mastered the job were appointed team leaders. Not everyone had the same opportunities, in his opinion, because of skin colour. Having regard to the employment equity program, only once in a meeting did a manager raise social issues under the employment equity program. Mr. Villiers received a self-identification email but chose not to identify himself as a member of a visible minority, as a matter of personal preference.

[182] Ms. Ligondé testified at the hearing at the request of Mr. Saint-Jean. She has dark skin. She began working for the CRA in 2008 as a contract worker. In 2012, she was appointed as a call centre team leader at the MG-3 level. In 2015, she transferred to Human Resources and became a project coordinator at the SP-5 level. She went on maternity leave from 2015 to 2018. In 2019, she transferred to Headquarters and became a human resources advisor. She pointed out that, in Montreal, she was not chosen for acting positions, which would have enabled her to advance her career. She stated that her manager always chose the same person, to her disadvantage. People in acting management positions have more opportunities to do management in their careers and obtain promotions. When she asked why she was not being selected for acting management positions, her manager told her that she needed technical experience, which she did not have. In her opinion, this was a way of covering up decisions regarding future promotions. [Translation] “Shell games” were being played to favour specific people. She did not report the situation.

[183] In addition, her manager commented on the way she spoke, describing it as “*parler en yo*” in French, but made no comments to the white people even though they also had speech differences. She explained that the “*parler en yo*” means to speak in Creole and that the expression has urban, Black culture and hip hop connotations. Moreover, she was criticized for errors in her work, and her acting staffing advisor contract was terminated. She stated that other people also made mistakes, but their acting status was not affected. Ms. Ligondé filed a discrimination complaint against Ms. Quan To, as well as a grievance. The discrimination complaint was dismissed, and the grievance is still pending.

[184] Like the others, Ms. Ligondé transferred to Headquarters and found that her potential was then recognized and her opportunities for advancement were much greater. She obtained a permanent position as an SP-7 and was promoted to the SP-8 level in 2023.

[185] The CRA submits that racism has no place in the Montreal office or anywhere else in the organization. Diversity is important. The CRA has made concrete efforts to counter discrimination against visible minorities. If acts of racism are reported, mechanisms are put in place to stop them. A distinction must be made between racism and performance management, and between racism and speed of promotion.

[186] As previously mentioned, Ms. Dubé, who retired from the CRA in 2021, testified at the hearing at the CRA's request. She had been the director of the Central and Southern Quebec TSO. Her responsibilities included grievances, discipline, training and staffing at the Montreal TSO. She stated that promotions were based on merit, not seniority, and on the requirements of the position to be filled. The best candidate for the job had to be chosen on the basis of the job requirements. She stated that there were far more applicants than positions when it came to promotions. Between 2012 and 2015, the government made budget cuts, severely reducing opportunities for promotion.

[187] Ms. Dubé also stated that there were far more opportunities for promotion at Headquarters as there were many job openings there, in part because staff had opportunities to transfer to other departments or agencies in Ottawa, resulting in vacant positions at CRA Headquarters. The entry level is often higher at Headquarters than in regional offices such as Montreal or Laval.

[188] The incidents described by Mr. Expérience, Mr. Thaverne, Mr. Raymond, Mr. Villiers and Ms. Ligondé provide context and show that certain shortcomings could arise at the Montreal TSO. However, these incidents are insufficient to demonstrate on a balance of probabilities that the CRA established or pursued policies and practices that deprived or tended to deprive Black people of any employment opportunities under section 10(a) of the CHRA. Moreover, the Tribunal notes that the CRA did promote each of these people at some point. Systemic discrimination is not established by these testimonies.

(ii) Complaints against Ms. Bachant, Ms. Péroquin and Mr. Tremblay

[189] On May 15, 2012, Mr. Saint-Jean sent a letter to Mr. Caponi, Acting Assistant Commissioner, Quebec Region, CRA, stating that he planned to file a complaint against Ms. Péroquin and Ms. Bachant, managers at the Laval TSO. Mr. Caponi is the delegated authority for workplace harassment.

[190] To avoid any direct conflict with Ms. Bachant and Ms. Péroquin, Mr. Martineau became Mr. Saint-Jean's manager from May 15, 2012, until Mr. Saint-Jean returned to the Montreal QRCC, on June 1, 2012.

[191] On October 25, 2012, Mr. Saint-Jean filed a 55-page organizational violence complaint against Ms. Bachant, Ms. Péroquin and Mr. Tremblay. He sent his complaint to Mr. Caponi.

[192] On December 12, 2012, Mr. Caponi informed Mr. Saint-Jean that a preliminary investigation would be held to determine whether a formal investigation should be launched into the allegations against Ms. Bachant and Ms. Péroquin. The allegations against Mr. Tremblay were inadmissible because more than a year had elapsed between the filing of the complaint and the incidents alleged against him. They would therefore not be included in the preliminary investigation under the CRA's *Preventing and Resolving Harassment Policy*. At the hearing, Mr. Saint-Jean confirmed that he had accepted the decision not to conduct a preliminary investigation regarding Mr. Tremblay. He did not file any grievance in that regard.

[193] Ms. Proulx, a labour relations technical advisor at the Workplace Relations Centre of Expertise, Quebec Region, CRA, conducted a preliminary investigation into the allegations against Ms. Bachant and Ms. Péroquin.

[194] During the investigation, Ms. Proulx obtained comments from the complainant, from Ms. Bachant and Ms. Péroquin, and from Ms. Desrosiers and Ms. Michaud.

[195] Ms. Proulx analyzed the 11 allegations against Ms. Bachant and the 6 allegations against Ms. Péroquin in the 55-page complaint. According to the testimony at the hearing, the investigation was based on written statements. Where she noted that statements were

contradictory or that alleged incidents were not corroborated, Ms. Proulx determined that the allegations were unsubstantiated and unfounded. She found that the complaint against Ms. Bachant and Ms. Péloquin was unfounded but recommended that management hold a meeting with Ms. Bachant to discuss certain problematic situations.

[196] Therefore, on July 24, 2013, Ms. Proulx recommended that Mr. Caponi dismiss the complaint at the preliminary investigation stage.

[197] On July 25, 2013, Mr. Caponi informed Mr. Saint-Jean that the allegations against Ms. Bachant and Ms. Péloquin did not constitute harassment within the meaning of the CRA's *Preventing and Resolving Harassment Policy*. He also considered that there had been some inappropriate behaviour by Ms. Bachant in the course of her management duties, and he told Mr. Saint-Jean that the employer would be taking measures in that regard. Mr. Saint-Jean's complaint was thus dismissed.

[198] The Tribunal notes that the preliminary investigation appears to have been rather cursory, with no assessment of the credibility or probative value of the written statements. This is a preliminary process intended only to determine whether further investigation is required. The Tribunal finds that, at this stage, there is insufficient evidence to establish that the process was discriminatory against Mr. Saint-Jean or that it deprived or tended to deprive other members of a visible minority group or other CHRA-protected group of any employment opportunities.

(iii) Grievances regarding findings of Ms. Proulx's preliminary investigation (Grievances 7010 9709 and 7010 9710)

[199] On August 15, 2013, Mr. Saint-Jean filed grievances challenging the conduct and findings of the preliminary investigation by Ms. Proulx as well as Mr. Caponi's decision to dismiss the complaint.

[200] On March 11, 2014, Mr. Caponi denied the grievance at the third level, finding that [translation] "the investigation was conducted in a professional, unbiased manner, and the findings are fair and reasonable." He further stated: [translation] "I therefore find no reason

to change my decision to dismiss your harassment complaints, and to conduct another investigation into the matter.” He went on to state the following:

[Translation]

Nevertheless, I wish to reiterate that, although it has been determined that your harassment complaints are unfounded, it appears that one of the respondents in question has behaved inappropriately towards you, and action has therefore been taken in that regard.

[201] On December 2, 2015, Ms. Lorenzato, Assistant Commissioner, Human Resources Branch, CRA, denied the grievances at the final level.

**(iv) Grievance regarding 2014–2015 performance evaluation
(Grievance 7012 6681)**

[202] Mr. Saint-Jean objected to his performance evaluation for April 1, 2014, to March 31, 2015, and filed a grievance (Grievance 7012 6681).

[203] He disagreed with his being rated at Level 3 for effective people management. On the form, Level 3 is described as follows: [translation] “The manager has achieved all EPM [effective people management] objectives; the manager’s actions or behaviour have had a positive impact on people and outcomes; and the manager has systematically and clearly demonstrated MG competencies.” Mr. Saint-Jean believed he deserved the Level 4 rating, which reads as follows: [translation] “The manager has achieved all EPM objectives and has, on occasion, exceeded expectations by guiding and influencing the views, attitudes and behaviours of others; the manager’s innovative or inspirational actions or behaviours have had a positive impact at a high level on people and outcomes; and the manager has clearly and consistently demonstrated MG competencies, with some notable strengths.”

[204] A third-level grievance hearing was held on May 11, 2016, at which the union representing Mr. Saint-Jean made its case.

[205] On June 29, 2016, Mr. Caponi allowed the grievance in part. He requested that the 2014–2015 performance evaluation be reviewed because [translation] “the rating assigned is inconsistent with the elements assessed and described in the written account.”

[206] Mr. Caponi rejected the allegations that the overall evaluation was discriminatory and that it amounted to a double penalty.

(v) Grievance regarding letter of reprimand of June 10, 2015, on negligence in performing duties (Grievance 7012 6682)

[207] On June 29, 2015, Mr. Saint-Jean filed a grievance challenging the employer's decision to issue him a letter of reprimand for an incident during a staffing process in which letters granting a bilingualism bonus to 27 applicants were mistakenly sent out while Mr. Saint-Jean was chair of the selection board.

[208] The grievance was denied at the final level on June 27, 2017, by Mr. Couture, Assistant Commissioner, Human Resources Branch, and Chief Human Resources Officer, CRA.

(vi) 2015 staffing recourse process

[209] In 2015, Mr. Saint-Jean complained that he had been interrupted during an interview by an evaluator, regarding his references. A staffing review process was therefore initiated. A meeting was held with Mr. Saint-Jean, his union representative, Mr. Rochette (a member of the selection committee) and Ms. Dubé. Ms. Dubé also spoke with each member of the selection committee. She read Mr. Saint-Jean's interview preparation plan and answer key. She stated that Mr. Saint-Jean's incomplete answers to some questions at the interview were also incomplete in the document he had prepared before that interview. This confirmed the results of the interview. Having completed all these checks, Ms. Dubé concluded that Mr. Saint-Jean had not been treated arbitrarily and that the topic of references had also been raised with other applicants. Ms. Dubé concluded that the examination had been administered transparently, in accordance with predefined instructions and not in an unreasonable or capricious manner.

(vii) Harassment grievance dated May 6, 2016 (Grievance 7013 7317)

[210] On May 6, 2016, Mr. Saint-Jean filed a harassment grievance against his employer.

[211] On June 10, 2016, Mr. Caponi sent him an acknowledgement of receipt stating that the grievance had been put on hold at the union representative's request.

[212] On January 11, 2022, Mr. Quinlan, Assistant Commissioner, Quebec Region (CRA 29), indicated that the incidents involved in the grievance had been formally investigated, and he denied the grievance at the third level on the same day (see Mr. Cantin's March 2018 report and Mr. Beauséjour's October 2018 decision).

(viii) Discrimination and harassment complaint dated December 14, 2016

[213] On December 14, 2016, Mr. Saint-Jean made a new complaint against Ms. Binette, Ms. Haddou, Ms. Dextrateur, Ms. Bachant, Ms. Dubé, Ms. Péloquin, Mr. Tremblay and Mr. Dinh.

[214] On January 3, 2017, Ms. Nesrallah, Manager, Discrimination and Harassment Centre of Expertise (DHCE), CRA, acknowledged receipt of the harassment and discrimination allegations form.

[215] On June 9, 2017, Mr. Bouchard, a consultant for the DHCE, and Jamie Lepage, a DHCE team leader, submitted a preliminary review report on Mr. Saint-Jean's allegations of harassment and discrimination. The report states that the DHCE had received from Mr. Saint-Jean a formal harassment and discriminatory harassment complaint against Ms. Binette, including a complaint of discrimination on the grounds of race, ethnic origin and colour relating to incidents at work, and against Ms. Haddou, Ms. Dextrateur, Ms. Dubé, Ms. Péloquin, Mr. Tremblay and Mr. Dinh.

[216] On June 9, 2017, following a preliminary review of the harassment and discrimination allegations, the DHCE recommended that allegations 2, 3, 4 and 6 against Ms. Binette be investigated. The DHCE found that allegations 1, 5 and 7 against Ms. Binette and all the allegations against the other individuals were inadmissible.

[217] On July 10, 2017, Mr. Beauséjour, Assistant Commissioner, Quebec Region, requested an investigation into four of the six harassment allegations made by Mr. Saint-Jean against Ms. Binette. The other allegations of discrimination against Ms. Binette and the other people concerned did not meet the admissibility criteria set out in the [translation] *Discrimination and Harassment Resolution Process*.

[218] Mr. Saint-Jean filed a grievance challenging the fact that certain allegations had not been investigated (Grievance 7014 5944). The grievance was allowed in part by Mr. Beauséjour on October 27, 2017, which meant that all the allegations against Ms. Binette would be investigated. The other discrimination allegations against the other people were considered inadmissible.

[219] On December 8, 2017, Mr. Beauséjour asked Mr. Cantin, an investigator from Textus Inc., to conduct an investigation. The investigation covered all the allegations against Ms. Binette (harassment allegations 1 to 6 and discrimination allegation 7, which was the same as harassment allegation 1). The allegations described by the DHCE and investigated by Mr. Cantin are similar to the allegations analyzed by the Tribunal in Section A, “Discrimination in the Course of Employment and Discriminatory Harassment”, of this decision. They can be summarized as follows:

- 1) October 2012: Mr. Saint-Jean alleges that Ms. Binette told his supervisor that he had been condescending to the person in charge of the partnership project with Haiti. (Haiti project)
- 2) April 2015: Mr. Saint-Jean alleges that Ms. Binette met with him to ask how he could have overlooked an error even though the manager had allegedly asked him three times to delete a paragraph. He claims that the written reprimand he received was unwarranted. (Bilingual bonus)
- 3) April 6, 2016: Mr. Saint-Jean alleges that Ms. Binette insinuated he had left the office without authorization to go watch a soccer game with a co-worker and that from then on she spied on him continually and even asked Mr. Jones to closely monitor his comings and goings. (Unauthorized absence)
- 4) July 2015: Mr. Saint-Jean alleges that Ms. Binette damaged his reputation and often walked by his office to spy on him. (Excessive surveillance, “*Bouchées des continents*”)

5) August 2016: Mr. Saint-Jean alleges that Ms. Binette tried to discredit him by imposing an administrative measure and a performance improvement plan on him that were based on false information. (Performance improvement plan upon return from sick leave)

6) August 2016: Mr. Saint-Jean alleges that Ms. Binette forced him to manage a different team to belittle him. (Assignment upon return from sick leave)

[220] Mr. Cantin conducted the investigation. On March 5, 2018, Mr. Cantin sent Mr. Saint-Jean and Ms. Binette a draft investigation report so that they could make clarifications or comments.

[221] On April 20 and 23, 2018, Mr. Saint-Jean and Ms. Binette provided written comments on the draft report. On April 30, 2018, Mr. Cantin submitted his final investigation report. He stated that he met Mr. Saint-Jean, Ms. Binette and six other witnesses in person, and interviewed four people by telephone.

[222] On April 30, 2018, Mr. Cantin submitted his final report. His conclusion is as follows:

[Translation]

168. Mr. Saint-Jean alleges that Ms. Binette discriminated against him (on the prohibited grounds of discrimination of race, colour and ethnic origin) or harassed him (in a discriminatory or personal manner), or both, between October 2012 and August 2016.

169. The investigator analyzed the relevant documents and interviewed the complainant, the respondent and 11 witnesses. The evidence gathered does not support any of the six allegations and leads to the conclusion that the complaint is unfounded.

[223] On October 26, 2018, Mr. Beauséjour, Assistant Commissioner, Quebec Region, concluded that the harassment allegations were unfounded and gave Mr. Saint-Jean a copy of Mr. Cantin's report.

[224] In 2019, Mr. Saint-Jean was transferred to Headquarters, in Ottawa. In April 2021, he was promoted to the MG-6 level.

[225] The Tribunal finds that it may seem odd for the manager who decides grievances at the third level, namely, Mr. Caponi, to be the person whose decision is being challenged by the employee through a grievance. This was the case for grievances 7010 9709 and 7010 9710 regarding Ms. Proulx's preliminary investigation and the related decision.

However, the appearance of bias in the management of grievances does not prove that the process is discriminatory or constitutes harassment based on Mr. Saint-Jean's race, national or ethnic origin, or colour.

[226] Ms. Dubé described the employment equity champion program. The designated groups were visible minorities (including Black people), women, Indigenous people, people with disabilities and members of the LGBTQ2 community. Employees could self-identify as a member of one of the designated groups. An action plan was developed. Everyone was supposed to be committed to employment equity in all aspects of work. There was nothing specific for countering anti-Black racism, since the programs were, rather, aimed at all visible minorities. The CRA wanted to become more representative of the Canadian population. Therefore, when a gap was identified, measures had to be taken, for example, forming a selection board and filling positions with targeted individuals from the pool of qualified people.

[227] Between 2018 and 2020, Deputy Commissioner Beauséjour conducted employment equity consultations with employees belonging to a visible minority group, among others. Following the consultation, a report was produced by the Commissioners' Office. It focused on four themes: work climate, staffing, career development and recourse. The CRA's 2020–2023 employment equity, diversity and inclusion action plan was filed at the hearing. A message to all CRA staff from the Commissioners' Office, dated October 21, 2020, states the following:

[Translation]

Like many of you, we were deeply touched by the events that took place earlier this year and by the demonstrations aimed at denouncing systemic racism and discrimination. Although some progress has been made, we are still a long way from living in a country where all members of employment equity groups (visible minorities, Indigenous people, people with disabilities, women and the LGBTQ2 community) have full access to equitable opportunities. The same is true of our organization, and we need to capitalize on the unparalleled value that lies in a diverse and inclusive workplace.

There is systemic racism and discrimination in our institutions, and we are no exception. The Canada Revenue Agency is fully committed to taking action to address this issue.

Although we recognize that anti-Black racism is of particular concern, we also recognize that systemic racism hurts employees who are Black, Indigenous or people of colour. Moreover, we recognize that there are specific areas of under-representation in our own workforce, including at the management and senior executive level for some groups.

This must change. This will change.

(Emphasis in original)

[228] The message mentions some measures, including the fact that when staffing committees are selected and trained, they must include people from the designated groups, especially for management positions (MG and EX), and these people must take training on unconscious or implicit bias. In addition, it is recommended that the CRA carry out targeted recruitment from designated groups where there have been significant discrepancies for a long time.

[229] The commissioners also stated the following:

[Translation]

We can do more. We can be more.

These changes will take time and will require a commitment from each and every one of us to change things.

(Emphasis in original)

(ix) Conclusion regarding systemic discrimination

[230] The Tribunal notes that the CRA has complaint and grievance mechanisms in place. These mechanisms are not perfect and can certainly be improved; nevertheless, they serve as bulwarks to protect the rights of individuals. For example, some people who have used these mechanisms have had their rights recognized, and some previously unfavourable decisions have been amended. The Tribunal is not persuaded that the CRA's policies and practices deprive or tend to deprive the Black community of any employment opportunities under section 10(a) of the CHRA and in accordance with the legal principles set out at paragraphs 43 to 53 of this decision. Admittedly, there is still work to be done, but the Tribunal notes that the CRA's policies and practices tend instead to increasingly benefit

visible minorities, including Black people. In short, the Tribunal finds that Mr. Saint-Jean has failed to show that there is systemic anti-Black discrimination at the CRA.

VI. CONCLUSION

FOR THESE REASONS, the Canadian Human Rights Tribunal

DISMISSES Frantz Saint-Jean's complaint.

Signed by

Marie Langlois
Tribunal Member

Ottawa, Ontario
September 13, 2024

Canadian Human Rights Tribunal

Parties of Record

Tribunal File: T2646/2221

Style of Cause: Frantz Saint-Jean v. Canada Revenue Agency

Ruling of the Tribunal Dated: September 13, 2024

Date and Place of Hearing:

In person, April 24 and 25, 2023, in the Ville-Marie Room — Canada Industrial Relations Board — 1501 McGill College Avenue, Montreal, Quebec H3A 3M8

By Zoom videoconference, May 8 and 9, 2023, May 31, 2023, September 18 and 19, 2023, and November 16 and 17, 2023

In person, December 5, 2023, in the Ville-Marie Room at the Canada Industrial Relations Board — 1501 McGill College Avenue, Montreal, Quebec H3A 3M8.

Montreal, Quebec

Appearances:

Frantz Saint-Jean, for himself

Aby Diagne and Sheila Osborne-Brown, for the Canadian Human Rights Commission

Jean-Robert Noiseux and Maude Normand, for the Respondent