Canadian Human Rights Tribunal

Tribunal canadien des droits de la personne

Citation: 2024 CHRT140
Date: December 18, 2024
File No.: T2201/2317

Between:

Tesha Peters

Complainant

- and -

Canadian Human Rights Commission

Commission

- and -

United Parcel Service Canada Ltd. and Linden Gordon

Respondents

Statutory Cap Ruling

Member: Kathryn A. Raymond, K.C.

Table of Contents

I. Overview of Ruling

[1] This is a ruling deciding how the Tribunal is to interpret and apply the statutory cap of twenty thousand dollars ($20,000.00) on damages in sections 53(2)(e) and 53(3) of the *Canadian Human Rights Act* (CHRA). The Tribunal is to apply the statutory cap per discriminatory practice as defined by sections 5-14.1 of the CHRA, not per complaint and not per instance of discrimination. This is the case regardless of the seriousness or number of separate instances that make up the discriminatory practice.

[2] The statutory cap may be exceeded per complaint where more than one discriminatory practice as defined in sections 5-14.1 of the CHRA is proven. The statutory cap also applies to any legally separate respondent found to have engaged in a discriminatory practice, subject to any application of section 65.

II. Background

[3] The Complainant, Ms. Peters, filed a complaint of discrimination with the Canadian Human Rights Commission (the "Commission") against her employer, United Parcel Service Canada Ltd. ("UPS"). After the Commission referred this complaint to the Tribunal, Ms. Peters brought a motion to have Mr. Gordon added as a respondent. The Tribunal agreed to add Mr. Gordon as an individual respondent (*Peters v. United Parcel Service Canada Ltd*., 2019 CHRT 15).

[4] Ms. Peters' complaint alleges multiple incidents of sexual harassment against Mr. Gordon for which she holds both Mr. Gordon and UPS, the Respondents, responsible. Her complaint also alleges that UPS discriminated against her based on disability in the course of employment under section 7 of the CHRA.

[5] After the Tribunal decided Ms. Peters' motion to add Mr. Gordon as a respondent, she brought a motion about how the Tribunal should interpret and apply the statutory cap of twenty thousand dollars ($20,000.00) on damages in sections 53(2)(e) and 53(3) of the CHRA. Ms. Peters requested a declaratory order stating that the Tribunal has jurisdiction to award up to $20,000.00 for each discriminatory practice a complainant experienced

pursuant to section 53(2)(e) such that the total compensatory award for pain and suffering may exceed $20,000.00. She also asked that I find that the Tribunal has the jurisdiction to award an additional amount up to $20,000.00 for each discriminatory practice where the conduct engaged in was wilful or reckless. Importantly, Ms. Peters did not identify what incidents, among those she alleged, that the Tribunal should find capable of forming a separate human rights complaint for which she should be separately compensated. Ms. Peters asked that I decide how many breaches or acts of discrimination arise from the factual circumstances of her complaint. She suggested that I should decide this by considering what facts could substantiate a complaint if proven.

[6] In an informal ruling on May 15, 2020, I decided that I would rule on Ms. Peters' motion after I had heard the evidence at the hearing, decided the issue of liability and made relevant factual findings. This decision was in the interests of efficiency and accurate adjudication. I would only need to decide the motion if liability was first established. I advised the parties that I would address Ms. Peters' motion about the interpretation and application of the statutory cap in tandem with the Tribunal's decision about remedy.

[7] Following a hearing, the parties provided closing submissions that addressed liability and remedy and that returned to Ms. Peters' motion. In her closing submissions, Ms. Peters particularized what she is asking the Tribunal to order pursuant to sections 53(2)(e) and section 53(3) of the CHRA as compensation for the discrimination she experienced. She grouped the alleged facts into what she described as five different discriminatory practices of sexual harassment, asserting each against both Respondents but for different reasons and conduct. Ms. Peters' assertion of disability-based discrimination remained as one alleged discriminatory practice.

[8] The Tribunal issued its decision regarding liability and the application of section 65 of the CHRA: *Peters v. United Parcel Service Canada Ltd. and Gordon* 2022 CHRT 25 (the "Liability Decision"). In the Liability Decision, I found that Ms. Peters' complaint was substantiated. For the purpose of determining whether either Respondent was liable, I found that Mr. Gordon had sexually harassed her contrary to section 14 of the CHRA. I found UPS liable for discriminating against Ms. Peters in relation to employment by adversely differentiating against her based on disability contrary to paragraph (b) of section 7 of the

CHRA. In the Liability Decision, I also concluded that UPS had not acted reasonably to prevent or mitigate Mr. Gordon's harassment in accordance with section 65(2) of the CHRA. As a result of not being able to establish a statutory defence pursuant to section 65(2), I found UPS liable for Mr. Gordon's sexual harassment pursuant to section 65(1) of the CHRA.

[9] The Liability Decision did not address the issues that Ms. Peter's motion raised, including how many distinct discriminatory practices were proven against each Respondent for the purposes of awarding damages, which was not decided. The point of the Liability Decision was to determine whether either Respondent had engaged in at least one discriminatory practice, and whether a ruling on Ms. Peters' motion was required and to what extent. As a result, having found that UPS engaged in discrimination based on disability pursuant to section 7 of the CHRA, I deferred deciding whether UPS had also engaged in sexual harassment, in addition to being responsible for Mr. Gordon's sexually harassing conduct. I reserved jurisdiction in the Liability Decision to decide the issues that Ms. Peters' motion raised, including the interpretation and application of the statutory cap on damages in section 53 of the CHRA and all other remedial issues in her complaint.

III. Ms. Peters' Motion

A. Ms. Peters' Position

[10] Ms. Peters acknowledges that there are two $20,000.00 maximum limits on damage awards under the CHRA, referred to as a "statutory cap". Section 53(2) of the CHRA creates a statutory cap on the amount of damages for pain and suffering ("general damages") that the Tribunal can order. Section 53(3) contains language that places a statutory cap on the amount of damages that the Tribunal may award when the discriminatory conduct is wilful or reckless ("special damages").

[11] Ms. Peters urges this Tribunal to interpret sections 53(2)(e) and 53(3) of the CHRA as permitting multiple damage awards of up to $20,000.00 for each serious incident causing pain and suffering or repeated instances of the same type of conduct and up to $20,000.00 for each incident or series of similar instances warranting special compensation based on

wilful or reckless conduct by each of the Respondents for each discriminatory practice defined by Ms. Peters in her motion. In short, she submits that the CHRA gives the Tribunal the jurisdiction to make multiple awards for multiple discriminatory practices.

[12] Following the hearing of the evidence, Ms. Peters clarified that the premise of her motion was based on her allegations that Mr. Gordon engaged in five discriminatory practices of sexual harassment against her pursuant to section 14 of the CHRA. Ms. Peters described what she considered to be five separate discriminatory practices this way:

1. The “dinner date”;
2. The harassment by phone;
3. The comments to co-workers;
4. The sexual touching of her buttocks; and
5. The sexual assault in the UPS parking lot.

[13] Ms. Peters asks that the Tribunal consider each of these as a stand-alone discriminatory practice because each on its own is capable of constituting the discriminatory practice of sexual harassment. In the Liability Decision, I found that each of these five events or patterns of behaviour occurred, but, as noted above, I deferred my decision on how many separate “discriminatory practices” these facts support for the purposes of awarding any general or special damages.

[14] Ms. Peters submits that the Tribunal should award damages against Mr. Gordon of $20,000.00 for each of the five categories that she defines as distinct discriminatory practices of sexual harassment for a total award of general damages for sexual harassment against Mr. Gordon of $100,000.00. Ms. Peters asks the Tribunal to make a corresponding award of special damages of $20,000.00 against Mr. Gordon for his alleged wilful or reckless conduct in relation to each of the alleged five distinct discriminatory practices involving sexual harassment that he engaged in, amounting to $100,000.00 for special damages. The total amount of general and special damages that Ms. Peters seeks against Mr. Gordon for sexual harassment is $200,000.00.

[15] Ms. Peters also submits that the Tribunal should require UPS to pay general damages of $20,000.00 for each of what she describes as the five discriminatory practices involving Mr. Gordon’s sexual harassment. This is based on UPS’s own conduct as the

employer, having failed to not consent to Mr. Gordon's sexual harassment and having failed to take reasonable steps to prevent and mitigate the effects of the sexual harassment pursuant to section 65(2) of the CHRA. For this, Ms. Peters seeks a total award of general damages against UPS of $100,000.00.

[16] She also says that UPS should pay special damages of $20,000.00 for wilful or reckless conduct for its role in exacerbating the conduct of Mr. Gordon and its failure to conduct any investigation of Ms. Peters' complaints until September 2015. Ms. Peters argues that this should be applied to each of Mr. Gordon's five practices of sexual harassment for a total award of special damages against UPS for sexual harassment of $100,000.00.

[17] Ms. Peters further submits that the Tribunal should order UPS to pay $20,000.00 in general damages for having discriminated against her based on disability pursuant to paragraph (b) of section 7 of the CHRA. Ms. Peters does not allege that UPS engaged in wilful or reckless conduct in this regard and does not ask the Tribunal to order UPS to pay her special damages pursuant to paragraph 7(b). The total amount of general and special damages that Ms. Peters seeks against UPS is, therefore, $220,000.00.

[18] Ms. Peters asks the Tribunal to order that the total award she seeks ($420,000.00) be made payable "jointly and severally" against the Respondents. I will address the issue of which Respondent should be responsible to pay which damages in the final decision.

[19] Ms. Peters submits that multiple awards are necessary under the CHRA to make a complainant whole for every discriminatory practice experienced and that this is consistent with the purpose and remedial nature of the legislation. Ms. Peters refers to section 2 of the CHRA, which states that the purpose of the CHRA is to ensure that all individuals have equal opportunities without being hindered by "discriminatory practices". Ms. Peters submits that the Tribunal should recognize that each distinct discriminatory practice causes pain and suffering to a complainant. She argues that interpreting sections 53(2)(e) and 53(3) as imposing a maximum cap of $20,000.00 on damages for each complaint allows respondents to continue to discriminate through ongoing occurrences of discriminatory practices without being held accountable.

[20] Ms. Peters also says that her requested approach to the assessment of damages is consistent with the federal *Interpretation Act* R.S.C. 1985, c. 1-21 (the "*Interpretation Act*"). Section 12 of this legislation provides that statutes are "deemed to be remedial and thus are to be given such fair, large and liberal interpretation as will best ensure that their objects are attained". She refers to the Supreme Court of Canada's decision in *CN. v. Canada (Human Rights Commission),* [1987] 1 S.C.R. 1114. At para 1134, the Supreme Court recognized that the words of the CHRA must be given their plain meaning but that "it is equally important that the rights enunciated be given their full recognition and effect. We should not search for ways and means to minimize those rights and to enfeeble their proper impact."

[21] Ms. Peters submits that there is nothing in sections 53(2)(e) or 53(3) of the CHRA that puts a ceiling on the damages to be assessed where a respondent has engaged in multiple discriminatory practices. To the contrary, she submits, an interpretation of these sections permitting multiple damage awards of up to $20,000.00 each responds to "the unique reality of harassment". Ms. Peters highlights that harassment is often defined as consisting of multiple incidents, although she argues that one incidence of serious conduct such as sexual assault can create a hostile work environment and constitute harassment. Ms. Peters cites *Murchie v. JB's Mongolian Grill*, 2006 HRTO 33, at para 161, as an example where a human rights tribunal held that a single serious incident could constitute sexual harassment.

[22] Ms. Peters submits that the Tribunal should also consider each instance of discriminatory practice separately because the assessment of every incident will be informed by the prior incidents of harassment. She says that it is necessary to separate instances of discrimination from one another to assess whether the harasser was wilful or reckless in their actions, which is a relevant consideration where a complainant seeks special damages.

[23] Ms. Peters offered examples of decisions of this Tribunal that, she says, support her position because they considered alleged breaches of the CHRA as separate instances within one filed complaint. She relies on *Willcott v. Freeway Transportation Inc.,* 2019 CHRT 29 [*Willcott*], *Tanner v. Gambler First Nation,* 2015 CHRT 19 [*Tanner*], *Constantinescu v.*

Correctional Service Canada, 2018 CHRT 17 [*Constantinescu*] and *N.A. v. 1416992 Ontario Ltd. and L.C.*, 2018 CHRT 33 [*N.A.*] in this regard.

[24] Ms. Peters also relies on principles of fairness in her motion. She submits that the Tribunal should make distinct awards for every breach of the CHRA that a victim of discrimination experienced so that the remedy and amount of compensation is fair.

[25] Ms. Peters offers the procedural argument that bringing a single complaint encompassing several discriminatory practices of sexual harassment is an efficient use of the Tribunal's resources. She argues that a "…complainant should not be punished for her efficient use of Tribunal resources… by an interpretation of the CHRA that would limit her damages to an amount far lower than had she brought each complaint individually." Ms. Peters submits that interpreting the CHRA as permitting only one award of damages, no matter the number of discriminatory practices, will encourage complainants to file multiple distinct complaints against the same parties. She suggests that this practice would absorb more of the Tribunal's resources and time, only for the Tribunal to address the same issues.

[26] Ms. Peters asserts that there are decisions of other human right tribunals where the total amount of compensation was limited by legislation, but the number of awards was not necessarily limited (referring to the Ontario Board of Inquiry, the precursor to the Human Rights Tribunal of Ontario (the "HRTO") in *Ghosh v. Douglas Inc.*, 17 CHRR D/216).

[27] Ms. Peters also refers to *A.B. v. Joe Singer-Shoes Limited*, 2018 HRTO 107, upheld on judicial review (2018) ONSC 5869 at paras 165 and 174 as an example of the HRTO ordering damages of $200,000.00 as compensation for distinct occurrences of sexual assault over several years. Ms. Peters submits that general damages in human rights cases have been increasing overall to reflect the higher damages available in the civil courts for cases involving sexual assault.

B. The Commission's Position

[28] The Commission takes the position that the total compensatory award under sections 53(2)(e) and 53(3) of the CHRA can exceed $20,000.00. The Commission submits that the statutory language in either section, some of the Tribunal's more recent jurisprudence and case law from Ontario support the jurisdiction of the Tribunal to award up to the maximum statutory cap for each discriminatory practice. The Commission points out that the Tribunal has not directly resolved whether a complainant can allege multiple breaches of the same or different sections of the CHRA and be awarded the maximum amounts for each alleged discriminatory practice. It is also unclear whether a complaint is limited to a global maximum of $20,000.00 for both general and special damages. The Commission's submissions were helpful to the Tribunal.

[29] The Commission submits that "discriminatory practice" within the meaning of section 53 of the CHRA should be defined as "any allegation or series of allegations that could ground a complaint (or in other words, that could form the basis of its own separate complaint)." The Commission submits that it is reasonable to conclude that the remedial provisions, including the statutory caps, were drafted with a single discriminatory practice in mind in the CHRA. If the Tribunal concludes that more than one discriminatory practice was committed, it should be able to award up the maximum amount for each of the discriminatory practices, bearing in mind that remedies need to be proportional and responsive to the findings of liability. The Commission further submits that, if Parliament had intended that the statutory cap apply globally to one complaint, it could have easily made this clear in section 53(2)(e) of the CHRA by wording that section to say that "…the person compensate the victim, by an amount not exceeding twenty thousand dollars, for any pain and suffering that the victim experienced as a result of the ~~[~~discriminatory–practice~~]~~ any discriminatory practices."

[30] Like Ms. Peters, the Commission placed significant emphasis on the Tribunal's decisions in *Willcott*, *N.A.* and *Tanner*. The Commission submits that I should adopt a "broad, liberal and purposive remedial approach" like the Tribunal took in the cases that the Complainant relied on.

[31] The Commission also argues that a global statutory cap would lead to absurd results and inefficient incentives. The Commission used the example of a retaliation complaint, which is, by statutory definition in section 14.1 of the CHRA, always filed after a complaint of discrimination is filed. The Commission pointed out that the most efficient approach when retaliation is alleged is for the Tribunal to amend the original complaint to include the retaliation complaint. The Commission argues, however, that if the statutory cap applies globally to the complaint/proceeding as a whole, that will reduce the potential recovery of the complainant, who could obtain more damages pursuing two separate proceedings. The Commission says that Parliament cannot have intended to work an injustice to complainants who reduce inefficiencies by amending their complaint to include retaliation.

[32] Lastly, the Commission agrees with Ms. Peters that the prior human rights jurisprudence of the former Ontario Board of Inquiry, at the time when damages for mental anguish were capped at $10,000.00, supports her motion by demonstrating the potential for the Tribunal to make multiple awards for discrete discriminatory practices.

[33] Based on the foregoing, the Commission submitted that, dependent on the Tribunal's factual findings, the Tribunal could find that separate discriminatory practices arose from the following:

1. Allegations arising from different sections of the CHRA; (as was the case in *Tanner)*;
2. Allegations pertaining to the conduct of different respondents (as was the case in *N.A*.);
3. Allegations pertaining to separate incidents of discrimination experienced by the complainant, which on their own could be a sufficient basis upon which to ground separate complaints (as was arguably the case in *Willcott*).

C. UPS's Position

[34] UPS submits that Ms. Peters is trying to "do an end run around the compensatory parameters established by [P]arliament" in the CHRA. UPS submits that the CHRA does not authorize the Tribunal to compensate a complainant for each individual act of alleged discrimination or harassment up to a maximum award of $20,000.00 in general or special damages.

[35] UPS agrees that the language of the CHRA requires a respondent to have committed a discriminatory "practice" or to have "engaged" in the discriminatory practice. However, UPS submits that the statutory language in section 53 of the CHRA, which defines discrimination as a "practice" or requires that someone "is engaging" or "has engaged" in a discriminatory practice, implies that there are multiple instances of discrimination or a pattern of conduct. UPS argues that if Parliament intended to allow an award of up to $20,000.00 for each individual occurrence, it would have used the word discriminatory "incident" or "act".

[36] UPS says that Ms. Peters is reading too much into a few of the Tribunal's cases. UPS asserts that there are many decisions of the Tribunal where the various acts or incidents that are said to make up a discriminatory practice are separated into their constituent elements for adjudication; however, they are then consolidated and assessed globally to place a value on the appropriate remedial relief. UPS submits that, generally, when the Tribunal separates incidents for adjudication, this does not lead to separate awards for damages. UPS argues that, while there are cases where a single egregious incident may justify an award of damages, the award of damages stays within the cap; the existence of additional incidents does not lead to an award beyond the cap on damages.

[37] UPS points out that there are no cases where multiple egregious incidents have resulted in multiple damage awards which exceed the overall statutory limit of $40,000.00 in compensation. This includes *Willcott*, where the total award was $11,500.00; each "act" did not attract values with the combined effect exceeding $20,000.00 in either category of general or special damages. UPS further points out that each of the discriminatory practices that the Tribunal found to have occurred in *Willcott* involved multiple acts or single egregious acts. UPS argues that, while the Tribunal held that multiple discriminatory practices had occurred, the Tribunal did not award damages for each discriminatory act that it decided made up that practice. UPS submits that, in any event, *Willcott* is an outlier and does not "bear the interpretative weight the Complainant seeks to attach to it".

[38] UPS adopts Ms. Peters' argument that the assessment of every incident of harassment will be informed by prior incidents of harassment; however, UPS submits that the reason the Tribunal may break a discriminatory practice into discrete acts is to assess whether any of the conduct was wilful or reckless, not to circumvent the $20,000.00 cap.

UPS cites *Willcott*, at para 250, as an example. Member Gaudreault stated that he could not ignore the racial and discriminatory insults that occurred before the termination in assessing whether the respondent's conduct was wilful or reckless.

[39] UPS submits that its position is reinforced by another decision of Member Gaudreault in *Duverger v. 2553-4330 Quebec Inc. (Aeropro)*, 2019 CHRT 18 [*Aeropro*], issued shortly before *Willcott. Aeropro* was also a harassment case involving multiple prohibited grounds of discrimination. At para 272, Member Gaudreault commented that, "In general, the Tribunal has historically exercised its discretion in the adjudication of damages, to award the maximum amount allowed under the CHRA for the most blatant, striking, or even the worst cases of complaints…." UPS submits that this illustrates that the cap applies to cases or complaints, not to individual incidents or breaches of the CHRA within a case.

[40] Likewise, UPS submits that the Tribunal has confirmed that the maximum amount of compensation the Tribunal can award for pain and suffering in any one proceeding, regardless of the number of incidents or grounds involved, is $20,000.00: *Woiden v. Lynn*, 2002 CanLII 8171 (CHRT) [*Woiden*] at paras 121 and 127 and *Closs v. Fulton Forwarders Incorporated and Stephen Fulton*, 2012 CHRT 30 [*Closs*], at para 81. UPS includes here the decision of the Tribunal in *N.A*. that Ms. Peters relied on. UPS cites *N.A.* as an example of a case where the complainant endured egregious sexual harassment bordering on sexual violence over several months and yet the Tribunal reiterated that its jurisdiction was limited to a maximum award of $20,000.00 for pain and suffering and for wilful or reckless discrimination. UPS submits that it does not matter whether a discriminatory practice involves one egregious incident or many, as in *N.A.*, for purposes of the assessment of damages: the maximum cap applies to all.

[41] UPS refutes Ms. Peters' argument that a finding by the Tribunal that there is a statutory cap on damages that applies "per complaint", regardless of the number of incidents or discriminatory practices, will encourage complainants to file multiple complaints. UPS submits that complainants are not likely to file multiple complaints for each act of harassment they endured, nor are they likely to endure ongoing discrimination to be able to file more complaints. UPS submits that, if that happened, the Tribunal would consolidate all the complaints into a single proceeding because it would be necessary for the Tribunal to

assess all of a respondent's conduct in one proceeding to accurately assess that conduct for purposes of determining damages.

[42] With respect to the case law outside of this Tribunal upon which Ms. Peters relies, UPS submits that none of it is relevant as no statutory cap is applicable to those proceedings.

[43] UPS submits that, if I apply the principles of statutory interpretation in the large and liberal manner that Ms. Peters suggests, I would effectively be amending the CHRA and would exceed my jurisdiction in doing so. UPS submits that the Tribunal cannot amend the plain and obvious meaning of a statute by "…judicial amendment under the guise of interpretation…": *Husky Oil Operations Ltd. v. Canada-Newfoundland and Labrador (Offshore Petroleum Board)*, 2014 FC 1170 at paras 49, 50 and 62; *Canadian Broadcasting Corp. v*. *SODRAC 2003 Inc.*, 2015 SCC 57 at para 47; *Weir-Jones Technical Services Incorporated v. Purolator Courier Ltd.*, 2019 ABCA 49 at para 180. UPS submits that unfettering the Tribunal's compensatory remedial powers must occur through legislative change, not through an interpretation that ignores a clearly enacted statutory limitation that all prior Tribunal decisions have respected.

D. Mr. Gordon's Position

[44] Mr. Gordon made submissions respecting other issues about remedy in his final submissions but did not take a position directly concerning Ms. Peters' motion.

IV. Issues

[45] The overall question I must answer is: What is the maximum potential remedy available under sections 53(2)(e) and 53(3) of the CHRA that the Tribunal can consider for Ms. Peters in this proceeding?

[46] To address this overarching question, the first issue is this: Are damages under sections 53(2)(e) and 53(3) of the CHRA awarded per complaint or per discriminatory practice?

[47] The second issue is: How is “discriminatory practice” defined for the purposes of section 53 of the CHRA? In answering this question, I will determine the following sub-issues:

> (i) Is “discriminatory practice” defined for purposes of section 53?
> (ii) Does “discriminatory practice” mean a singular practice or event, or may it include multiple practices or events?
> (iii) May each incident or instance of the same type of discriminatory conduct be treated as a separate discriminatory practice for purposes of awarding damages?
> (iv) May damages be awarded for each finding of a different discriminatory practice as defined in sections 5-14.1?
> (v) Does section 33(2) of the *Interpretation Act* change the Tribunal’s interpretation of “discriminatory practice”?
> (vi) How do the grounds of discrimination fit into the remedial legislative scheme?
> (vii) Is the statutory language regarding the Tribunal’s authority to issue orders in section 53 consistent with the Tribunal’s interpretation of discriminatory practices?
> (viii) Can the total award of general or special damages pursuant to section 53 exceed $20,000.00 and, if so, in what circumstances?
> (ix) Is the risk of double recovery where multiple discriminatory practices have occurred in relation to employment a reason to conclude that the Tribunal’s interpretation of its remedial jurisdiction is unreasonable?

[48] The third issue of relevance to the overarching question is this: What is the application of the Tribunal’s interpretation of sections 53(2)(e) and 53(3) of the CHRA upon Ms. Peters’ claim for personal remedies? In other words, what are the separate discriminatory practices for which the Tribunal may award Ms. Peters a remedy under sections 53(2)(e) and 53(3)?

[49] The third issue requires the Tribunal to consider a further issue that is relevant to determining the maximum potential remedy available under sections 53(2)(e) and 53(3) that the Tribunal can consider for Ms. Peters in this proceeding. As noted, Ms. Peters asks that the Tribunal order damages for UPS’s own conduct in relation to sexual harassment. That raises the following further issue: Are the actions of the employer in relation to a complaint of sexual harassment a separate discriminatory practice from the employee’s sexual

harassment? The Tribunal will address this issue to fully determine the number of discriminatory practices for which the Tribunal may award a remedy to Ms. Peters under sections 53(2)(e) and 53(3) of the CHRA. The Tribunal's conclusions respecting how section 53 is to be applied "per Respondent" will be addressed in a separate but related ruling; that ruling is to be considered part of the Tribunal's consideration of the overarching issue that Ms. Peters' motion raised.

V. Analysis

A. The Alleged Lack of Case Law Supporting This Motion Is Not Determinative

[50] With the exception of the Commission, which offered detailed submissions about how the Tribunal should interpret the relevant statutory language in the CHRA for the motion, the parties relied heavily on case law in their submissions. UPS's closing submission confidently asserted that "with a database of over 1,000 decisions from 1979 to present, the Complainant will not be able to produce any significant decisions which directly supporting (sic) her position." The Respondent correctly points out that many Tribunal decisions state that there is a cap on the amount that the Tribunal may award as general damages for the pain and suffering that a victim of discrimination experienced.

[51] A Tribunal decision stating simply that there is a statutory cap on general and special damages without addressing how the Tribunal should interpret and apply the cap is an example of the Tribunal citing the CHRA. The decision does not settle the issue of how the Tribunal should apply the statutory cap and whether that is per complaint, per discriminatory practice or per incident. *Woiden* and *Closs* are but two examples of this. Where cases note that there is a statutory cap and that the Tribunal should reserve the amount of $20,000.00 in damages for the most egregious cases, that is making a separate point about quantum. *Closs* and *Aeropro* are examples of this. Whenever a statutory cap applies to a damage award, it follows that the maximum amount of damages is likely to be reserved for the worst cases. Quantification of the amount is a separate issue from the application of the cap itself.

[52] Before this motion, the Tribunal had not been asked to make a ruling about how it should interpret and apply the statutory cap on damages in sections 53(2)(e) and section

53(3) in any of the cases relied upon by the parties. There can be many reasons for this. One reason may be because Tribunal proceedings frequently include self-represented complainants, and the statutory cap issue is often dealt with informally by members of the Tribunal during early issues-based case management. A self-represented party asking for more than $40,000.00 would likely be informed about the statutory caps and invited to rework their requested remedies accordingly. The lack of case law is not sufficient "proof" that UPS is correct about the certainty of the Tribunal's jurisprudence respecting the issues that Ms. Peters' motion raised. The Tribunal is required to decide Ms. Peters' motion based on an interpretation of the CHRA. The case law is referenced where it fits into the analysis of the statutory language.

[53] In any event, Ms. Peters is not disputing that there is a statutory cap on damages. What she argues through her motion as a beginning point is that the statutory cap should not be found to apply to her complaint as a whole; she says that if it were, the Tribunal would apply the statutory cap more broadly than the statute requires it to apply.

B. Prior Decisions of Other Tribunals Generally Not Relevant

[54] UPS is correct in its position that the decisions of other tribunals about remedy where the tribunal is not subject to a statutory cap are of no direct assistance in resolving this motion.

[55] There was a statutory cap on damages for mental anguish in Ontario at one time and, therefore, I will return to an Ontario decision to illustrate how that was eventually addressed where that is relevant to my analysis.

C. Key Decisions About the Tribunal's Jurisdiction

[56] The Tribunal has no inherent jurisdiction to award damages; the Tribunal may only exercise the authority granted to it to do so by the CHRA. In *Chopra v. Canada (Attorney General) (F.C.A.)*, 2007 FCA 268 at para 36, the Federal Court of Appeal reconfirmed the decision in *Seneca College of Applied Arts and Technology v. Bhadauria*, 1981 CanLII 29 (SCC) that "Human rights legislation does not create a common-law cause of action…. the

complainant is limited to the remedies which the Tribunal has the power to grant." The Tribunal must follow the plain language of the statute. It has no discretion to do otherwise. This means that the Tribunal cannot reinterpret the CHRA in a manner that would constitute an amendment of the legislation.

[57] I cannot order remedies that the CHRA does not expressly provide for or that cannot be derived from the legislation by necessary implication. Respecting those powers that the CHRA has granted to the Tribunal, I am required to apply them in a fair, large and liberal manner. The Supreme Court of Canada confirmed in *C.N. v. Canada (Human Rights Commission)*, [1987] 1 S.C.R. 1114 at pp. 1134-38 [*Action Travail*] that the CHRA must receive a fair, large and liberal interpretation to advance and fulfil its purpose. As well, the Federal Court of Appeal in *Public Service Alliance of Canada v. Canada Post Corporation*, 2010 FCA 56 (CanLII) (aff'd 2011 SCC 57) [*Public Service Alliance*] addressed the Tribunal's overall purpose in the remedial context. At paras 299 and 301, the court approved of the Tribunal's comment that the purpose of the remedial provisions under the CHRA is to put victims of discrimination back in the position they would have been in had the discrimination not occurred in an effort to make them whole. However, this does not mean that I can read words into the statute that are not there.

[58] The parties agree about what the basic principles of statutory interpretation are: the text should be read with its ordinary meaning in the context of the statute as a whole and with regard for its legislative purpose. The Commission offered some of the more significant decisions about the interpretation of the CHRA with the general reminder that the Tribunal should interpret provisions that grant rights broadly, while narrowly construing exceptions and defences: *Action Travail*, supra at p. 1134; *Canada (Human Rights Commission) v. Canada (Attorney General)*, 2012 FC 445 (CanLII), [2013] 4 FCR 545 at para 246 (citing para 7 of *Gould v. Yukon Order of Pioneers,* [1996] 1 S.C.R. 571); *Gwinner v. Alberta (Human Resources and Employment)*, 2002 ABQB 685, at paras 78-79; *Tranchemontagne v. Ontario (Director, Disability Support Program), 2006 SCC 14,* at paras 14, 33 and 49; and *Canada (Canadian Human Rights Commission) v. Canada (Attorney General)*, 2011 SCC 53, at para 33 [*Mowat*].

[59] The Complainant and UPS focused primarily on the case law and the wording of sections 53(2)(e) and 53(3) of the CHRA; they did not provide submissions about any other relevant statutory context. This means that not all parties took a position about what provisions were relevant for purposes of the statutory context provided by the CHRA and, therefore, did not make submissions about provisions in the CHRA which I have considered here. The parties are deemed to have knowledge of the CHRA. They had opportunities to advance the submissions that they wished to make for this motion when it was filed and in closing submissions after the hearing.

D. Issue 1: Are damages awarded under the CHRA to address a substantiated complaint or a finding of a discriminatory practice?

(i) The Case Law

[60] Notwithstanding the cases in which the Tribunal has stated that it can award up to $20,000.00 for a substantiated complaint, I was not prepared to rule out the possibility that Ms. Peters was making a valid point about how the Tribunal should interpret and apply sections 53(2)(e) and 53(3) of the CHRA in her case. Some of the cases, like *Bilac v. Abbey and NC Tractor Services Inc*., 2023 CHRT 43, refer to the statutory cap on damages applying to the pain and suffering that a victim of discrimination has experienced because of a respondent's discriminatory practice; others use the language of a complaint in the context of remedies.

[61] The CHRA is written as if a complaint is filed over one alleged discriminatory event or practice. Because of this, the CHRA does not expressly state how remedies should be addressed where the Tribunal finds more than one discriminatory practice has occurred. This may account for some of the apparent interchangeability in the use of the terms "complaint" and "discriminatory practice" in Tribunal jurisprudence. Because the provisions in the CHRA that are relevant to complaints and remedies are written as if every complaint concerns one discriminatory practice, an ambiguity arises where a complaint concerns more than one alleged discriminatory practice. I will note that the CHRA is also written as if there is only one respondent.

[62] We return to the Tribunal jurisprudence that Ms. Peters submits supports her position to determine whether the case law makes it clear that the Tribunal may award damages per discriminatory practice or only per complaint. In *Constantinescu,* the Tribunal commented that "…the demonstration of several discriminatory practices or wilful or reckless acts could potentially have an impact on remedies the Tribunal may order under section 53." While this comment suggests the Tribunal's willingness to consider the issues of damages along the lines argued by Ms. Peters, the Tribunal in this case was not asked to decide how remedies could potentially be impacted if the Tribunal found several discriminatory practices. The Tribunal simply observed that remedies could potentially be impacted. *Constantinescu* concerned a finding of one discriminatory practice. *Constantinescu* is notable for its clear conclusion that a finding of one discriminatory practice is required to substantiate a complaint and to trigger the availability of remedies under the CHRA. *Constantinescu* did not decide whether the Tribunal could award the total available amount of damages of up to $20,000.00 "per complaint", "per discriminatory practice" or "per incident".

[63] A few of the more recent Tribunal cases have included determinations about remedy that Ms. Peters submits are consistent in their result with her position (*Willcott*, *N.A.* and *Tanner*). However, the reasons in these decisions do not address the issue of jurisdiction that Ms. Peters' motion raised or address the relevant statutory language specifically. As a result, they are of limited assistance.

[64] In *Willcott,* the complainant sought one award of general damages for all the discriminatory events he experienced in the maximum amount of $20,000.00. Member Gaudreault decided that there were three (multiple) instances of discrimination and assigned monetary values to each, awarding general damages of $2,000.00, $3,000.00 and $2,000.00.

[65] The Tribunal's decision to make multiple awards of general damages is, on its face, helpful to Ms. Peters' argument that damages are not awarded "per complaint". The issuance of multiple orders of general damages in *Willcott,* however, took place below the statutory cap; the complaint led to a total award of $11,500.00 in both general and special damages.

[66] Ms. Peters submits that the Tribunal could have awarded up to $20,000.00 for each finding of a discriminatory practice, which implies awarding damages per discriminatory practice. This submission appears to be based on Member Gaudreault's comment about his finding concerning the discriminatory practice of harassment at para 239 where he stated that "…this suffering does not justify the maximum compensation of $20,000, as permitted by paragraph 53(2)(e) of the CHRA. I will therefore order $2,000 in compensation for pain and suffering." With respect, Ms. Peters reads too much into this comment made by the Tribunal. The comment suggests that the Tribunal considered awarding up to $20,000.00 for the discriminatory practice of harassment. This could have been Member Gaudreault's approach to each finding of a discriminatory practice, but this is a supposition. Other findings made in *Willcott* about quantum make no mention of the $20,000.00 limit, and the total award was not in danger of exceeding the statutory cap. In the absence of direct comment on the issue, I am not prepared to assume that Member Gaudreault considered the statutory cap for each discriminatory practice in a case where damages do not even exceed the statutory cap assuming it applies per complaint. *Willcott* is not a clear authority for Ms. Peters' position.

[67] I will add that Member Gaudreault was not asked to decide how to apply the statutory cap in *Willcott;* the case does not provide an analysis of the Tribunal's jurisdiction or the statutory language of the CHRA as the parties did not raise or argue that issue. Because the amounts awarded were well below the cap, the Tribunal in *Willcott* did not need to consider whether there were any implications arising from how the Tribunal organized the facts in that case into discriminatory practices for purposes of awarding damages pursuant to the cap in section 53(2)(e). *Willcott*, therefore, cannot stand as a clear precedent for the proposition that the Tribunal has the jurisdiction to grant damage awards per discriminatory practice nor may it be concluded from *Willcott* that the Tribunal is prepared to award general and special damages that exceed $20,000,00 in relation to a complaint.

[68] The *N.A.* case is also of some relevance to Ms. Peters' motion. In *N.A*., the Tribunal awarded general and special damages totalling $60,000 to remedy one complaint (paras 349, 353 and 354). Because the awards totalled $60,000.00, *N.A.* provides an example of where the Tribunal awarded more than $40,000.00 for both general and special damages

for one complaint. However, each award the Tribunal made did not exceed $20,000.00. The Tribunal was not asked to address the issue of how the statutory cap applies or the jurisdictional issue. The Tribunal in *N.A.* did not order multiple awards for the multiple instances of sexual harassment that it found occurred in that case. *N.A*. does not speak to this important issue in Ms. Peters' motion.

[69] The Tribunal did award separate amounts of general and special damages against each respondent for a total of $60,000.00 in damages, thereby exceeding the statutory cap if it applies per complaint. However, there were two respondents. The statutory cap was not exceeded in relation to either. Ms. Peters submits that the Tribunal's approach in *N.A.* is consistent with her interpretation of the Tribunal's remedial jurisdiction to order damages against each respondent, as opposed to awarding damages per complaint. I agree that it is consistent with her interpretation. However, whether damages are to be awarded only "per complaint" or "per discriminatory practice" is a different question than whether damages may be awarded per respondent. I will return to address *N.A.* when I address whether damages are to be awarded "per respondent".

[70] In *Tanner*, the complainant substantiated two discrete complaints of discrimination, one based on ancestry, described as the "Descent Rule", and the other based on retaliation. Ms. Peters submits that the Tribunal first acknowledged the $20,000.00 maximum amount allowed for general damages in section 53(2)(e) of the CHRA. She points out that the Tribunal then awarded special damages for each of the two complaints that had been substantiated, $10,000.00 and $15,000.00 respectively. Accordingly, the Tribunal awarded more than $20,000.00 in special damages against one respondent. However, the Tribunal appears to have treated the Descent Rule allegations and the retaliation allegation as separate complaints. It did not address its jurisdiction to award $25,000.00 in special damages against one respondent based on two discriminatory practices but rather used the term "complaint". The Tribunal in *Tanner* also did not order multiple awards of damages for the same discriminatory practice as Ms. Peters has requested. *Tanner* is not of clear assistance to the issue of whether damages are awarded per complaint or per discriminatory practice; if anything, the Tribunal's reasons concerning remedy suggest that the Tribunal treated the proceeding as involving two distinct complaints. This is not entirely clear; the

reasons do not state that there was an order that two complaints be heard together or that the complaint was amended. However, for a retaliation complaint to be successful, section 14.1 of the CHRA requires that there be a complaint of discrimination already filed. It is most likely that two complaints were filed.

[71] Commission counsel brought a decision contrary to the Commission's position to the Tribunal's attention, in keeping with the professional obligations of counsel which is appreciated. In *Brickner v. Royal Canadian Mounted Police*, 2018 CHRT 2, at para 14 [*Brickner*], a complainant alleged multiple acts of discrimination and retaliation pursuant to section 14.1 of the CHRA and asked for over $200,000.00 in damages pursuant to sections 53(2)(e) and 53(3). The Tribunal did not decide whether it had jurisdiction to order multiple awards, as the issue was left for the hearing. However, the Tribunal commented that, "It does not follow that the allowance of further allegations of retaliation automatically increases the potential limit of damages…" The Commission notes that while these *obiter* comments in *Brickner* imply that the Tribunal was disinclined to make orders that would constitute multiple recovery in either section 53(2)(e) or 53(3), the Tribunal Member appeared to misapprehend the Tribunal's prior case law about damages for retaliation. The Member commented that a complaint of retaliation had not ever resulted in separate or additional remedies under sections 53(2)(e) and 53(3) of the CHRA. As noted in *Tanner*, the Tribunal granted separate remedies for each of the two discriminatory practices, one pursuant to section 5 and one of retaliation pursuant to section 14.1.

[72] Another example is *Tabor v. Millbrook First Nation*, 2015 CHRT 9 and *Tabor v. Millbrook First Nation*, 2015 CHRT 18, upheld on judicial review: *Millbrook First Nation v. Tabor*, 2016 FC 894, (the "*Tabor*" decisions) where a complaint of discrimination pursuant to sections 7 and 10 and of retaliation pursuant to section 14.1 were treated as two separate complaints. Although all were heard together, the Tribunal issued two sets of reasons about liability, separating the retaliation complaint from the allegations of discrimination. The parties settled the remedy issues on their own. However, the Commission submits that the case illustrates that the Tribunal treated the retaliation complaints separately from the discrimination complaints and that each could have led to separate awards.

[73] In the *Tabor* decisions, the Tribunal awarded damages for both the discriminatory practice that led to the complaint and for retaliation which is also a discriminatory practice and involves additional facts. In similar situations, the Tribunal should award separate damages for retaliation because it is a separate discriminatory practice. It seems inconsistent that retaliation would be compensated but not other different discriminatory practices in the CHRA. In any event, the *Tabor* decisions treated the allegations in that case as two complaints and did not address the issues raised in Ms. Peters' motion.

[74] In sum, with specific attention to those cases that Ms. Peters relied on, there is a lack of authoritative decisions from the Tribunal about whether the statutory cap applies per complaint, per discriminatory practice or per incident.

[75] In my view, the decision of the Federal Court in *Canada (Attorney General) v. Cruden*, 2013 FC 520 [*Cruden*], which was upheld in *Canada (Attorney General) v. Cruden*, 2014 FCA 131 lays important groundwork for this motion. The Federal Court stated, at para 64: "It is an allegation of a discriminatory practice which grounds the complaint, and it is the finding of a discriminatory practice that provides the Tribunal with jurisdiction to order remedial action."

[76] The Federal Court in *Cruden* identified that it is "discriminatory practices" that are prohibited by the CHRA and that a complaint may be filed when a person reasonably believes that another has engaged in a discriminatory practice (section 40(1) of the CHRA). The Federal Court confirmed that an order may be issued against the person found to be engaging or to have engaged in the discriminatory practice (section 53(2) of the CHRA). In addressing the legislative scheme to this extent, *Cruden* explains the basic statutory relationship between the terms "complaint" and "discriminatory practice" in the CHRA. *Cruden* pointed out that section 53 includes a requirement that a respondent is or has engaged in a discriminatory practice for the respondent to be made subject to an order. In this way, *Cruden* confirms that damages may be awarded for a discriminatory practice. However, the Federal Court was not called upon to decide whether damages are awarded per complaint where a discriminatory practice has occurred or whether damages may be awarded per discriminatory practice where more than one discriminatory practice is upheld in relation to a complaint. That is the essence of the first issue in this motion. The Federal

Court also was not asked to decide how “discriminatory practice” should be defined (the second issue).

(ii) Use of “Complaint” and “Discriminatory Practice” in Section 53

[77] The issues of whether the Tribunal may award damages per complaint or per discriminatory practice, and how a “discriminatory practice” is to be defined, must be decided based on statutory interpretation. Section 53 does not expressly state in plain language that a maximum statutory cap applies to general and special damages “per complaint” as UPS submitted. Neither does section 53 clearly state that the cap applies to each discriminatory practice, or each group of facts capable of substantiating a complaint on their own, as Ms. Peters argued, or to each instance of discriminatory behaviour. Whether the Tribunal may award these damages “per complaint”, per “discriminatory practice” or “per incident” is not immediately clear from reading section 53. Section 53 does not define discriminatory practice. The CHRA also does not explicitly direct whether a complaint or discriminatory practice must include all discriminatory incidents that a complainant experienced in a single complaint.

[78] As noted in *Cruden*, section 53 uses both the terms “complaint” and “discriminatory practice”. It is a well-established principle of statutory interpretation that there is a presumption against tautology in legislation. The use of two different terms is presumed to be intentional and suggests that these terms do not mean exactly the same thing or are not intended to be used in the legislative scheme in the same manner.

[79] As *Cruden* also notes, section 53(2) of the CHRA begins with a requirement that “the complaint be substantiated”. The same applies to section 53(3). This may initially imply that damages may be intended to be awarded “per complaint”. However, in my view, this implication is not necessarily persuasive given the use of both “complaint” and “discriminatory practice” in section 53 and the singular nature in which the CHRA is written regarding both complaints and discriminatory practices. For reasons explained below, it is also not the most reasonable interpretation of section 53.

[80] Once a complaint is substantiated, section 53(2) of the CHRA provides that the Tribunal may make an order against the person found to be engaging or to have engaged in a "discriminatory practice". Section 53(2) states:

> (2) If at the conclusion of the inquiry the member or panel finds that the complaint is substantiated, the member or panel may, subject to section 54, make an order against the person found to be engaging or to have engaged in the discriminatory practice and include in the order any of the following terms that the member or panel considers appropriate….

[81] Section 53(3) provides as follows:

> (3) In addition to any order under subsection (2), the member or panel may order the person to pay such compensation not exceeding twenty thousand dollars to the victim as the member or panel may determine if the member or panel finds that the person is engaging or has engaged in the discriminatory practice wilfully or recklessly.

[82] The terminology "discriminatory practice" and "engaging in the discriminatory practice" in section 53 of the CHRA is used to identify the person against whom the order should be made. The phrase "Having engaged in a discriminatory practice" in section 53(2) identifies the person or persons against whose acts or omissions warrant a remedy for the complainant. I add here that, in the *Interpretation Act*, section 35(1) provides that in every enactment a "person" includes a corporation. This allows the Tribunal to make an order to remedy the acts or omissions of a person or corporation, including corporate employers and service providers.

[83] I conclude that the Tribunal can make an order against more than one person where more than one person has engaged in a discriminatory practice in a complaint. One person may engage in more than one discriminatory practice. It follows that the Tribunal awards damages for the actions of a person and not for the complaint as a whole, which is consistent with an authority to award damages per discriminatory practice, not per complaint. This is consistent with the conclusion in *Cruden* that "It is an allegation of a discriminatory practice which grounds the complaint, and it is the finding of a discriminatory practice that provides the Tribunal with jurisdiction to order remedial action."

[84] My reasons in Issue 2(v) below concerning the application of the *Interpretation Act* contain additional reasons for my conclusion that damages are not awarded per complaint.

E. Issue 2: How is a discriminatory practice defined in the CHRA?

(i) Is discriminatory practice defined for purposes of section 53?

[85] Ms. Peters and the Commission urge me to define a discriminatory practice as "any allegation or series of allegations that could ground a complaint (or in other words, that could form the basis of its own separate complaint)." This is ambiguous, open-ended and would, in my view, lead to subjective demarcations between discriminatory practices.

[86] I do not need to further consider this approach because discriminatory practice is defined elsewhere in the CHRA. The remedial powers of the Tribunal in sections 53(2)(e) and 53(3) are contained in Part III of the CHRA. Section 39, which falls within Part III of the CHRA, provides direction in this respect. Section 39 states: "For the purposes of this Part [meaning Part III], a discriminatory practice means any practice that is a discriminatory practice within the meaning of sections 5 to 14.1." Sections 5-14.1 are in Part I of the CHRA. The discriminatory practices defined in these sections are part of the definition of what discrimination is.

[87] The wording of section 39 requires that the definitions of what discrimination is found in Part 1 be determinative for purposes of the CHRA's remedial sections. Section 39 directs that the term "the discriminatory practice" in section 53 be one of the discriminatory practices statutorily recognized and defined by any of sections 5-14.1.

[88] This statutory direction to employ a discriminatory practice aligns with the fact that each of the individual sections in sections 5-14.1 describes a different discriminatory practice. It is also consistent with one of the primary purposes of the CHRA which is to create protected rights for each person to be free of specific, enumerated types of practices that the CHRA deems to be discrimination. Human rights protections in the CHRA are specific. There is no general protection against discrimination in all situations involving all circumstances of human interaction in the CHRA. Sections 5-14.1 of the CHRA,

fundamentally, can be seen as creating a protection from discrimination in a specific circumstance of human interaction.

[89] Those protected situations are further limited to discrimination based on specific grounds. The grounds of discrimination, which are sometimes referred to as "protected characteristics", are defined in section 3, as follows:

> 3 (1) For all purposes of this Act, the prohibited grounds of discrimination are race, national or ethnic origin, colour, religion, age, sex, sexual orientation, gender identity or expression, marital status, family status, genetic characteristics, disability and conviction for an offence for which a pardon has been granted or in respect of which a record suspension has been ordered.

In this way, each of the sections in sections 5-14.1 of the CHRA creates a targeted protection from discrimination on specific grounds.

[90] Section 4, which immediately precedes sections 5-14.1 and the description of the types of discriminatory practices recognized in Part I, begins with the statement that "A discriminatory practice, as described in sections 5-14.1, may be the subject of a complaint…." Section 4 concludes with the words that "…anyone found… to have engaged in a discriminatory practice may be made subject to an order as provided in section 53."

[91] It is clear from section 4 that sections 5-14.1 define each different type of discriminatory practice that may result in the application of section 53 and, therefore, lead the Tribunal to issue an order containing an award of general or special damages up to $20,000.00.

(ii) Does "discriminatory practice" mean a singular practice or event, or may it include multiple practices or events?

[92] Each definition of a discriminatory practice in sections 5-14.1 of the CHRA could include a range of potential circumstances from one event to many. A "discriminatory practice" may be one event. But more often in complaints before the Tribunal, it is a series of events. For example, discriminatory harassment pursuant to section 14, including sexual harassment, often involves more than one event.

[93] In my view, it is significant that “discriminatory practice” may include single or multiple events. I have concluded that the capacity of the word “practice” to include multiple events means that Parliament intentionally chose “discriminatory practice” to be a singular discriminatory practice. It should not be read as “discriminatory practices”. This result is also supported by the reasoning for the next three sub-issues.

(iii) May each incident or instance of the same type of discriminatory conduct be treated as a separate discriminatory practice for purposes of awarding damages?

[94] As noted, the CHRA does not explicitly direct whether a discriminatory practice must include all discriminatory incidents that a complainant experienced in a single complaint or whether the Tribunal may treat each incident of discrimination or harassment as a separate and discrete discriminatory practice. However, I conclude that the Tribunal cannot treat each incident or instance of the same type of discriminatory conduct in sections 5-14.1 as a separate discriminatory practice for purposes of awarding damages.

[95] There is nothing in the CHRA that would expressly grant jurisdiction to the Tribunal to subdivide a discriminatory practice committed by one respondent into several of the same discriminatory practices to make additional awards of damages. The only content in the CHRA that informs the Tribunal as to what counts as a "discriminatory practice" and what should be grouped together under one "discriminatory practice" are sections 5-14.1. The CHRA defines discriminatory practices; it does not use the language of discriminatory incidents or repeated instances.

[96] I am not prepared to read into the CHRA the authority to subdivide a discriminatory practice into segments based on events or any other measure without a legislative framework upon which to disassemble the discriminatory practice. Deciding how many incidents or instances of harassment should count as a stand-alone discriminatory practice would be a highly subjective task, prone to arbitrary, inconsistent and perhaps unreasonable or unfair outcomes to respondents. There are almost an infinite number of behaviours, including both acts and omissions, that could be a discriminatory practice. There is no direction in the CHRA that would provide a principled basis upon which the Tribunal could

decide what discriminatory experiences should be grouped together to make up one discriminatory practice deserving of a separate award.

[97] Instead, the statutory provisions in sections 5-14.1 indicate what a separate discriminatory practice is on a plain reading of the language. They are presumed to be distinct because there is a presumption that Parliament does not include unnecessary content in drafting legislation. Therefore, there is a presumption that the discriminatory practices have been selected specifically and separated purposively and that each is intended to offer a different protection from the rest. This is the case even when there is a degree of overlap in what these sections address.

[98] As examples, Parliament drafted both sections 5 and 6 to deal with the denial of accommodation. There is overlap to some extent. However, presumptively, those sections deal with different issues. But this is not to say that their issues do not share certain facts. Likewise, sections 7, 8, 9, 10, 11 and 14 address discrimination in relation to employment. These sections identify what a distinct discriminatory practice is in the context of employment. There is overlap between these sections “in relation to employment”, and there may be some factual overlap, but each section is presumed to address different matters.

[99] Section 14 makes it a discriminatory practice to sexually harass an individual in matters related to employment. The wording “a discriminatory practice” and “harass” both implicitly suggest that all sexual harassment that is found to have occurred in relation to employment, whether it is a singular event or consists of multiple events, is included in the one discriminatory practice of sexual harassment.

[100] Section 7 is a more prescriptive section. Section 7 is delineated into paragraphs (a) and (b). I have not been tasked with interpreting the difference between paragraphs (a) and (b) of section 7 of the CHRA in the context of Ms. Peters’ motion. I was required by the allegations in the complaint to decide in the Liability Decision whether Ms. Peters had been adversely differentiated against based on disability in relation to employment pursuant to paragraph (b) of section 7. To be clear, I am not deciding whether section 7 constitutes one or two different discriminatory practices by reason of paragraphs (a) and (b). I do note that, in *Willcott*, the Tribunal awarded damages pursuant to both paragraphs 7(a) and 7(b). While

not addressed expressly, the Tribunal treated paragraphs 7(a) and (b) as two different discriminatory practices, making one finding of termination of employment and one finding of discrimination after reinstatement, both contrary to section 7, each warranting an award.

[101] In any event, whether in relation to paragraphs 7(a) or 7(b) or section 7 of the CHRA as a whole, if Parliament intended that there be multiple incidents of what constitutes a discriminatory practice in this section, it appears intended that the Tribunal treat those incidents as one distinct discriminatory practice under whatever section or paragraph is appropriate. There is nothing in section 7 or the remainder of the CHRA to indicate otherwise.

[102] While the finding of a breach of paragraph 7(b) of the CHRA in the Liability Decision was made upon a series of events, including for example, the acts and omissions of several managers in handling Ms. Peters' absences from work, medical leave and access to disability benefits, as well as UPS's decision not to contact her about return to work, there is nothing that I have read in the CHRA that would lead me to conclude that I ought to decide that UPS has committed more than one discriminatory practice in relation to employment pursuant to paragraph 7(b). Notably, Ms. Peters did not suggest that more than one discriminatory practice ought to have been found to have occurred in relation to section 7. Ms. Peters did not explain why she considered sexual harassment to result in multiple awards of damages when she did not take that position regarding adverse differentiation. She also did not reconcile her differing positions between section 14 and section 7.

[103] Ms. Peters submits that the sexual harassment that she experienced should be grouped by the kind of conduct that occurred, such as all comments to co-workers, all harassing phone calls and all incidents of touching and assault. There is no authority in the CHRA to separate the sexual harassment she experienced into separate discriminatory practices based on the kind of behaviour involved for purposes of grounding an award of damages.

[104] The CHRA defines what the discriminatory practice is under section 14 and what the discriminatory practice is under paragraph 7(b) in this case. The Tribunal's role is to decide whether either of those alleged discriminatory practices occurred. The proposition that this

discretion includes the jurisdiction to make multiple findings of the same discriminatory practice and award damages for each is not a reasonable interpretation of the CHRA.

[105] I have no legislative authority to do as Ms. Peters asks. I have no jurisdiction to award five different awards of general damages or of special damages to Ms. Peters for the discriminatory practice of sexual harassment in section 14 pursuant to section 53(2)(e) of the CHRA.

(iv) May damages be awarded for each finding of a different discriminatory practice as defined in sections 5-14.1 of the CHRA?

[106] The Tribunal may award damages for each discriminatory practice, as separately defined in the CHRA in sections 5-14.1, that it finds to have occurred within one substantiated complaint.

[107] The above approach is consistent with the decision of the HRTO in *Ketola v. Value Propane Inc.,* 2002 CanLII 46511 (ON HRT) [*Ketola*]. The HRTO respected the applicable statutory cap on general damages for mental anguish that restricted the Board's jurisdiction but ordered multiple awards based on its finding of separate and legally distinct discriminatory practices, namely, disability and reprisal, under the applicable legislation. In *Ketola*, the HRTO illustrated the proper application of the principle of statutory construction that exceptions in statutes are to be narrowly applied. The general rule is that there is no arbitrary cap on the amount of damages that a court or tribunal may award; decision-makers only need to take into account the usual considerations relevant to remedy required by case law. In *Ketola*, the HRTO recognized the statutory cap on damages for mental anguish as an exception to the general rule and, therefore, interpreted the exception narrowly, while applying the rest of the statute in a manner to fully activate its remedial nature. The HRTO in *Ketola* recognized the statutory cap on general damages for mental anguish but ordered multiple awards of damages for mental anguish based on its finding of separate and legally distinct discriminatory practices under the applicable legislation. In that way, *Ketola* overlaps with Ms. Peters' requested order and supports her position.

[108] With respect to the statutory language in the CHRA, in my view, the reference to “the” discriminatory practice in remedial sections 53(2)(e) and 53(3) is intended to convey the assumption that the complaint has been filed because a discriminatory practice has allegedly occurred. The Tribunal is to award damages, if proven, on that specific basis. The definite article “the” is used to refer to a specific or particular discriminatory practice. Where the Tribunal finds that more than one of the enumerated discriminatory practices in sections 5-14.1 occurred, it may award damages for each as a separate discriminatory practice. However, the award of general or special damages pursuant to section 53 for each discriminatory practice defined in sections 5-14.1 cannot exceed the statutory cap of $20,000.00.

[109] Importantly, this interpretation aligns with the purpose of the CHRA which is to extend the law created by the CHRA to prevent or address discrimination, not to unnecessarily restrict it. The fact that Parliament included a statutory cap in section 53 on certain damages in the CHRA does not mean that the Tribunal must adopt the broadest interpretation of that cap. To the contrary, the interpretation of the statutory cap in section 53 must place the cap in its proper statutory context and must respect the remainder of the CHRA. This approach is in accordance with section 12 of the *Interpretation Act* which requires that I afford a “large and liberal interpretation of the Act”, while remaining within the jurisdiction of the Tribunal to grant remedies for “the” discriminatory practice. In my view, the language of discriminatory practice includes each proven discriminatory practice in sections 5-14.1.

[110] I will add here that while the Tribunal may award general damages for each separate discriminatory practice, subject to the statutory cap, and, therefore, for more than one discriminatory practice in a substantiated complaint, the complainant is still required to demonstrate the pain and suffering they endured under section 53(2)(e) of the CHRA for each discriminatory practice for purposes of establishing entitlement to each award. Each instance of pain and suffering may be distinct among discriminatory practices, warranting separate awards. However, it will not always be the case that the pain and suffering will be distinct for each discriminatory practice. If the different discriminatory practices lead to the same pain and suffering, the Tribunal will need to consider whether separate damages would lead to double recovery and keep the amount of damages the same, or whether

higher damages should be awarded as a result. This is one reason that double recovery is identified as a sub-issue in this ruling.

(v) Does section 33(2) of the *Interpretation Act* change the Tribunal's interpretation of "discriminatory practice"?

[111] I have noted more than once in these reasons that "complaint" and a "discriminatory practice" is consistently referenced in the CHRA in the singular. Section 33(2) of the *Interpretation Act* states that "Words in the singular include words in the plural, and words in the plural include the singular." Further, section 3(1) of the *Interpretation Act* provides that "Every provision of this Act applies, unless a contrary intention appears, to every enactment…."

[112] If section 33(2) of the *Interpretation Act* is required to apply to the CHRA, a complaint can mean "complaints" and a discriminatory practice can mean "discriminatory practices," as required by the circumstances. Whether section 33(2) did apply to the words "discriminatory practice" in the CHRA was not an insignificant point. If the term "discriminatory practice" is required to include the plural "discriminatory practices", it means that discriminatory practice could be interpreted as either a singular discriminatory practice (consisting of one or more events, as I have concluded) or a collective of different discriminatory "practices". This interpretation would have section 53(2) of the CHRA implicitly direct the Tribunal to make an order pursuant to section 53(2)(e), not exceeding $20,000, for all discriminatory practices; in other words, one order of general damages and one order of special damages would be made for one complaint. A determination by the Tribunal that sections 3(1) and 33(2) of the *Interpretation Act* mandated the inclusion of "discriminatory practices" would have resolved this ruling quickly. Ms. Peters motion for an order declaring that the Tribunal may order up to $20,000.00 for each discriminatory practice would have failed entirely.

[113] The parties apparently did not consider section 33(2) of the *Interpretation Act* to be applicable to the issue in the motion involving the proposed plurality of awards. They made no submissions in this regard. The parties are taken to have knowledge of this and the other

provisions in the *Interpretation Act* as it is a statute of general application upon federal statutes; the parties who took positions about this motion were represented by counsel.

[114] The application of every provision in the *Interpretation Act* is not strictly mandatory if the provision does not appear intended to apply. While the parties did not raise or rely on the interpretive guide in section 33(2) that "words in the singular include words in the plural, and words in the plural include the singular", the Tribunal is obligated to consider whether any potentially relevant statutory provision in the *Interpretation Act* applies. I therefore considered whether section 33(2) applies, which would be the case if no contrary intention appeared in the CHRA. A contrary intention is a permitted exception in section 3(1) of the *Interpretation Act* to the application of section 33(2). I have concluded that section 33(2) does not apply to the words "discriminatory practice" and, does not, therefore, alter my conclusions about how the legislative scheme is intended to operate and how the Tribunal is to apply the statutory cap.

[115] My reasons above explain why I concluded that "discriminatory practice" is intended to be a singular discriminatory practice even when it includes repeated or multiple events. These reasons are relevant here. From a reading of all of the sections of the CHRA that pertain to "the discriminatory practice" in section 53(2)(e), including sections 5-14.1 and section 53 as a whole and sections 12 and 13 of the *Interpretation Act*, I conclude that Parliament did not intend that discriminatory practice be read as including discriminatory practices in the plural.

[116] The application of section 33(2) and reading "discriminatory practice" as "discriminatory practices" would change the legislative scheme significantly. As explained, the CHRA is written throughout as if the complaint alleges one discriminatory practice. Where complaints that proceed to a hearing before the Tribunal involve multiple, separate discriminatory practices in sections 5-14.1, the more reasonable interpretation of section 53 allows the Tribunal to order payment of damages for separate and distinct discriminatory practices. Therefore, when a respondent engages in more than one discriminatory practice, the Tribunal may make more than one award of damages. Parliament cannot have intended that the Tribunal would be unable to order general or special damages for more than the first discriminatory practice the Tribunal selects to address or that, regardless of the number

of discriminatory practices held to have occurred, only one award of general or special damages could be made for the entire complaint. Such a restriction on the Tribunal would be unjust to a successful complainant who proved that two or more separate and distinct discriminatory practices occurred pursuant to sections 5-14.1 of the CHRA.

[117] To illustrate, a complainant could be significantly impacted by one discriminatory practice warranting general damages at the high end of the range and then experience a second, separate and distinct discriminatory practice, also warranting an award at the high end of the range. In theory, if all discriminatory practices are subject to one statutory cap and the Tribunal awarded $20,000.00 for the first discriminatory practice, the Tribunal would not have room available under the cap to award any general damages for the second discriminatory practice. The Tribunal would be unable to award what the Tribunal would have awarded if the complainant had filed the second discriminatory practice as a separate complaint. This result would leave the Tribunal unable to award damages on a principled basis for the second discriminatory practice. The Tribunal might have to split the damages between the two awards, thereby negatively and unfairly impacting the complainant.

[118] Such a result would be contrary to the administration of justice and to our concepts of social accountability. The Tribunal would be unable to provide a complete remedial solution that addresses any or all the harms that can arise from separate and distinct discriminatory practices as the Federal Court of Appeal in *Public Service Alliance* requires. That these types of problems could arise should the Tribunal apply the statutory cap to the entire complaint suggests that Parliament could not have reasonably intended this interpretation.

[119] Reading section 53(2)(e) of the CHRA as permitting only one order of damages for pain and suffering per complaint, or likewise for special damages, could also encourage a respondent engaging in wilful discriminatory conduct to engage in new offensive practices, such as terminating an employee on medical leave or to retaliate, as the Tribunal could award no further deterrent of general or special damages against them.

[120] Parliament must have intended that the Tribunal would be able to address different discriminatory practices while staying within the cap applicable to each one; in other words, that the statutory cap apply per discriminatory practice.

[121] On the one hand, seen in perspective, section 33(2) of the *Interpretation Act* is a grammatical rule. On the other hand, section 13 of the *Interpretation Act* articulates a principle which requires that legislation be interpreted in accordance with its preamble (here, the CHRA is intended to extend the laws in Canada that proscribe discrimination). Section 12 deems every statute to be remedial and requires that the Tribunal give the statute the fair, large and liberal construction and interpretation that best assures the attainment of its objects. These principled statements sit well with the CHRA. However, grammatical rules in what is separate legislation in the *Interpretation Act* should not be presumed to apply to quasi-constitutional legislation such as the CHRA in a manner that can lead to unreasonable results. I am not persuaded that Parliament intended that section 33(2) of the *Interpretation Act* be applied to "discriminatory practice" as an overriding direction. This would contradict the ideal that the CHRA is remedial and is to be given the fair, large and liberal construction and interpretation that best assures the attainment of its objects, as that leads to unreasonable results. The Tribunal should interpret and apply the CHRA in a manner that is both consistent with its precise statutory language ("discriminatory practice") and avoids unreasonable results.

[122] Section 33(2) of the *Interpretation Act* does not change the conclusion I have reached concerning the interpretation and application of "discriminatory practice" in section 53 of the CHRA.

(vi) How do the grounds of discrimination fit into the remedial legislative scheme?

[123] How the grounds of discrimination fit into the remedial legislative scheme is an issue because Ms. Peters referenced what she describes as grounds of discrimination in her complaint and requested separate damage awards for both disability and sexual harassment. This framing of the issues leads to confusion in two respects. First, I am framing Ms. Peters' complaint as being about two alleged discriminatory practices pursuant to

sections 7 and 14 respectively; it is not about two grounds of discrimination. It so happens that the alleged grounds or protected characteristics are different in each of the discriminatory practices in sections 7 and 14 in Ms. Peters' case. To be clear, regardless of how Ms. Peters has described her request, her motion that I find that there are five different discriminatory practices pursuant to section 14 is not based on the repetition of the same ground but rather on the alleged repetition of the same discriminatory practice through different facts.

[124] Secondly, Ms. Peters' reference to sexual harassment as a ground requires clarification because sexual harassment is not a protected characteristic. Sexual harassment is sometimes referred to in a complaint as if it is a "ground". It is more accurately a specific type of discriminatory harassment, which is a discriminatory practice. Section 14(1) of the CHRA states that it is a discriminatory practice to harass a person on a prohibited ground of discrimination in matters related to employment. Section 14(2) then clarifies that sexual harassment is deemed to be harassment on a prohibited ground of discrimination. Therefore, sexual harassment is a discriminatory practice and is further deemed to be harassment on a prohibited ground. The statutory treatment of sexual harassment in section 14 is unique in the CHRA. I use the descriptor "unique" because all of the other grounds or protected characteristics in the CHRA are listed in section 3(1).

[125] There is a further point to clarify about the grounds of discrimination and the issue of remedy. "Discriminatory practice" is further defined in Part I in section 3.1 in a manner which incorporates the concept of grounds of discrimination and the intersectionality between grounds of discrimination. Section 3.1 specifically recognizes that a plurality of grounds may be combined to create a discriminatory practice: "…A discriminatory practice includes a practice based on one or more grounds of discrimination or on the effect of a combination of prohibited grounds." Accordingly, a discriminatory practice may include one or several grounds of discrimination or be based on the effect of a combination of grounds of discrimination.

[126] While protected characteristics are relevant to the legal test for discrimination, the sections of the CHRA that are relevant to the grounds of discrimination are not key to the remedial scheme in the CHRA. Section 4, which states that a discriminatory practice may

be the subject of a complaint, does not provide any separate or distinct redress for different grounds through the complaint process in Part III. Section 53 authorizes awards only in relation to discriminatory practices.

[127] Read together, sections 3, 4 and 39 of the CHRA reinforce my conclusion that Parliament did not intend to imply in section 53 that the Tribunal may award damages for each ground or protected characteristic proven in a complaint. A complainant is not entitled to be awarded damages based on each ground or protected characteristic upon which the complainant has been discriminated against. These sections reinforce that the Tribunal awards damages for proven discriminatory acts and omissions. A discriminatory practice may be based on one ground of discrimination in section 3 or the unique treatment of sexual harassment in section 14, or include several grounds of discrimination, or be based on the effect of a combination of grounds of discrimination as section 3.1 permits. In all cases, the Tribunal awards remedies based on acts or omissions that constitute a discriminatory practice found within sections 5-14.1 of the CHRA.

(vii) Is the statutory language regarding the Tribunal's authority to issue orders in section 53 consistent with the Tribunal's interpretation of discriminatory practices?

[128] Section 53(2)(e) of the CHRA authorizes the Tribunal to make an "order", while section 53(2) provides the "following terms" to be included in the order. For the sake of completeness, I considered whether there was any content in relation to issuing an "order" in the CHRA or about the use of prescribed terms in section 53 that could be included in an order that was inconsistent with my interpretation of discriminatory practice in sections 53(2)(e) and 53(3). There is not.

[129] The Tribunal's authority to issue an order in section 53(2)(e) of the CHRA is consistent with the Tribunal's authority to issue an order per discriminatory practice per complaint or one order or more with terms concerning different discriminatory practices in section 5-14.1, per complaint.

(viii) Can the total award of general or special damages pursuant to sections 53(2)(e) and 53(3) of the CHRA exceed $20,000.00 for each, and, if so, in what circumstances?

[130] Yes, the total award of general or special damages may exceed $20,000.00 but only in certain circumstances. Where a complaint alleges one discriminatory practice, as defined in sections 5-14.1 of the CHRA, and one respondent is liable, UPS's position concerning the applicability of the statutory cap per complaint is correct. In those circumstances, the Tribunal has the jurisdiction to make an order with an award of general or special damages that does not exceed the $20,000.00 statutory cap; in these circumstances, the total amount of potential general and special damages is capped at $40,000.00. UPS's position is also correct insofar as the total amount that the Tribunal may award per discriminatory practice in sections 5-14.1 for either general or special damages may not exceed the $20,000.00 statutory cap.

[131] However, the total award of either general or special damages pursuant to sections 53(2)(e) and 53(3) of the CHRA may exceed $20,000.00 per complaint or per proceeding in limited circumstances. One such circumstance is where there is more than one legally separate respondent engaged in the discriminatory practice. Section 53(2) links the statutory cap to the "person" who engaged in "the" discriminatory practice. In theory, the Tribunal has the jurisdiction to make more than one award of general damages pursuant to section 53(2)(e) where a complaint is substantiated against more than one respondent. In theory, the Tribunal may award damages against each respondent for each legally distinct discriminatory practice that the Tribunal finds they have engaged in. I put aside, for now, consideration of the application of section 65 of the CHRA upon respondents that are in an employment relationship (an employer and an employee), which I will address separately.

[132] The Tribunal also has the authority to make an award for each distinct discriminatory practice in sections 5-14.1 of the CHRA, given the legislative scheme. The availability of additional awards of general or special damages in a complaint is predicated on the existence of separate, distinct and proven discriminatory practices in a complaint as defined in sections 5-14.1.

[133] In all cases, the theoretical starting point is that the Tribunal may apply the statutory cap in section 53(2)(e) of the CHRA against each legally separate respondent per proven distinct discriminatory practice. Awards for general and special damages ordered in respect of a complaint may in this way exceed $20,000.00 as long as the statutory cap in sections 53(2)(e) and 53(3) is not exceeded against any one legally separate respondent for any one discriminatory practice. This means that general and special damages for a complaint may exceed $40.000.00 in total in certain circumstances. However, the complainant must still establish their entitlement to remedies, and remedies under section 53 are discretionary. The usual issues relevant to the assessment and award of damages still apply. This includes guarding against double recovery, an issue which is relevant and addressed for purposes of this case below.

(ix) Is the risk of double recovery where multiple discriminatory practices have occurred in relation to employment a reason to conclude that Tribunal's interpretation of "discriminatory practice" and its remedial jurisdiction is unreasonable?

[134] Notwithstanding the singular manner in which the CHRA is written, I have concluded that the legislative scheme permits the existence of multiple discriminatory practices and multiple culpable respondents. Respondents may be legally separate persons or organizations, or respondents may be in an employer/employee relationship, in which case section 65(1) will apply if section 65(2) does not.

[135] As noted above, the fact that sections 5-14.1 of the CHRA create multiple distinct discriminatory practices "in relation to employment" is likely to lead to some factual overlap between the provisions in the CHRA that apply to employment. The statutory provisions involved in this case (sections 7 and 14) overlap to the extent that they both are "in relation to employment" with UPS which could suggest overlapping facts and the potential for double recovery in relation to certain awards authorized by section 53.

[136] I provide an example, drawn from this case, that would lead to a double recovery of damages. There is a finding that Mr. Gordon engaged in the discriminatory practice of sexual harassment contrary to section 14. Sexual harassment in relation to employment may also

constitute adverse differential treatment on the basis of sex pursuant to paragraph 7(b) of the CHRA: *Opheim v. Gagan Gill and Gilco Inc*. 2016 CHRT 12 at para 36. This allegation was not pursued in any detail at the hearing. I decided not to make a finding regarding whether Mr. Gordon engaged in the discriminatory practice of adverse differentiation based on sex because of his conduct, having decided that Mr. Gordon's conduct was sexual harassment. Had I made a ruling that there was adverse differentiation based on sex due to Mr. Gordon's conduct, I would not be prepared to award damages for pain and suffering or special damages twice for the same conduct. Where two discriminatory practices are based on the same facts, I would be concerned that two awards would constitute a double recovery of damages.

[137] A risk of double recovery can arise even in a case with one discriminatory practice. For example, a complainant may prove a discriminatory practice but have received partial compensation from some other proceeding or through a previous settlement. The Tribunal has the discretion and flexibility in fashioning remedies to address that issue, the same as it does, as an example, in making adjustments to awards of income loss due to mitigation.

[138] This flexibility includes the discretion to make adjustments to the amounts of awards between discriminatory practices and/or multiple respondents if that is appropriate. The Tribunal decides whether the harms arising from discriminatory practices are distinct or overlap. The risk of double recovery is a risk to be managed by the Tribunal when it arises; it is not a reason to interpret and apply the statutory cap more broadly than the CHRA requires.

F. Issue 3: What is the application of the Tribunal's interpretation of sections 53(2)(e) and 53(3) upon Ms. Peters' claim for personal remedies?

(i) Per Discriminatory Practice

[139] In this case, I made two findings that a discriminatory practice occurred as "placeholders" in the Liability Decision for the purpose of establishing whether either Respondent was liable for any discrimination and, therefore, to determine whether the Tribunal was required to decide Ms. Peters' motion. The placeholder findings in the Liability

Decision were that Mr. Gordon had breached section 14 and that UPS had breached section 7. Obviously, these qualify as two separate discriminatory practices defined within sections 5-14.1.

[140] However, the Liability Decision did not decide how many discriminatory practices had occurred. That was to be decided after I determined whether the Tribunal had the jurisdiction to make multiple damage awards pursuant to sections 53(2)(e) and 53(3) of the CHRA per complaint or per respondent in this or any related ruling. I, therefore, did not decide whether UPS engaged in the discriminatory practice of sexual harassment based on its own separate conduct in the Liability Decision. However, I made all factual findings necessary to do so by determining UPS's involvement in the Liability Decision. I employed these factual findings in the Liability Decision to decide whether UPS is liable for Mr. Gordon's sexually harassing conduct pursuant to section 65(2) of the CHRA, a finding that Ms. Peters also requested. What remains to be decided is whether UPS engaged in the discriminatory practice of sexual harassment itself, quite apart from being liable for what Mr. Gordon did. The question is whether UPS engaged in a second discriminatory practice pursuant to section 14, in addition to the finding that it engaged in a discriminatory practice pursuant to section 7.

[141] Until this remaining issue is decided, there is no basis to disturb the existing findings of two discriminatory practices in the Liability Decision based on Ms. Peters' motion. Because of the statutory cap in section 53(2)(e) of the CHRA, I do not have the jurisdiction to award more than $20,000.00 in general or special damages for Mr. Gordon's discriminatory practice of sexual harassment pursuant to section 14; nor do I have the jurisdiction to award more than $20,000.00 for the disability-grounded discriminatory practice of adverse differentiation in the course of Ms. Peters' employment by UPS pursuant to section 7.

[142] I will return to how I should apply my conclusions that the Tribunal may award damages for each separate discriminatory practice and against each legally separate respondent to Ms. Peters' case in the separate ruling about how the Tribunal should apply section 65(1) to UPS.

(ii) Per Respondent

[143] I have left aside for now the application of section 65(1) of the CHRA to the corporate respondent who employs the individual employee who is found to have engaged in sexual harassment. Thus far in this analysis, in theory, I have the jurisdiction to award damages for Mr. Gordon's sexual harassment based on the findings in the Liability Decision, and I have the jurisdiction to award damages for disability-grounded discrimination based on adverse differentiation in the course of employment against UPS. Whether I should award further general and special damages against UPS for its own conduct in relation to Mr. Gordon's sexual harassment and how section 65(1) applies to this complaint is, as I have explained, addressed in a separate but related ruling that continues to resolve the issues that Ms. Peters' raised in her motion.

G. Other Relevant Considerations That Ms. Peters Raised

(i) A Statutory Cap Is Unfair

[144] Ms. Peters submits that it is unfair that damages for pain and suffering from distinct incidents of sexual assault and harassment would be limited to $20,000.00. I am not without empathy for her position on this point. The CHRA was passed in 1975 with a statutory cap on damages for pain and suffering set at $5000.00. The cap was increased to $20,000.00 in 1998 by statutory amendment. The amount of statutorily authorized damages is not indexed and has not been adjusted for inflation since.

[145] Today, the Tribunal's awards are arguably not fully compensatory when compared to civil awards or the awards of other tribunals that are not subject to a legislative cap. The Latin phrase from ancient Roman civil law comes to mind: "Dura lex, sed lex" or "The law is hard, but it is the law." I must apply sections 53(2)(e) and 53(3) of the CHRA as they are written.

(ii) A Statutory Cap Encourages a Multiplicity of Complaints

[146] Ms. Peters asserts that a ruling by this Tribunal confirming the application of the statutory cap to sexual harassment may lead to a multiplicity of complaints by encouraging complainants to file separate, stand-alone complaints to gain access to multiple awards for what would essentially be the same discriminatory practice. In doing so, a complainant increases the risk that the Tribunal will find any one complaint to be not substantiated. Sexual harassment often involves repeated, ongoing, unwelcome conduct. Unwarranted division of alleged events into separate complaints may weaken a complainant's position. Proceeding with multiple complaints may also lower the amount of damages that a Tribunal awards for a substantiated complaint.

[147] In any event, the Tribunal has procedural discretion pursuant to sections 50(3)(d) and (e) of the CHRA over all matters of process. The Tribunal has exercised its procedural discretion to cure inefficiencies by requiring that complaints be heard together where more than one complaint is referred to the Tribunal involving the same parties. The Tribunal often permits a complaint to be amended to add related discriminatory practices including retaliation. If it is in the interests of efficiency for the Tribunal to order that complaints be heard together or that complaints be combined by amendment, that is likely to occur.

VI. Conclusion and Order

[148] Ms. Peters' motion is dismissed in part. Sections 53(2)(e) and 53(3) of the CHRA create a statutory cap on the total amount of an award of general or special damages that the Tribunal can order against any one legally separate respondent who the Tribunal has found to have engaged in a discriminatory practice prescribed in sections 5-14.1 of the CHRA. The CHRA permits, where appropriate, that the Tribunal issue one award of general damages against a respondent that is found to have engaged in a discriminatory practice and, where the conduct of the respondent who engaged in the discriminatory practice was wilful or reckless, one award of special damages for that conduct. This is the case regardless of the egregiousness or number of separate instances that make up that discriminatory practice. To be clear, a discriminatory practice includes one significant incident or a series

of incidents consisting of the same discriminatory practice. In short, each discriminatory practice may result in an award of general and/or special damages. Each award of general and special damages is subject to the statutory cap and cannot exceed $20,000.00.

[149] However, where a complainant proves more than one separately defined discriminatory practice in sections 5-14.1 of the CHRA, the Tribunal has the jurisdiction to award more than $40,000.00 per complaint; the Tribunal may award up to $20,000.00 in both general and special damages for each separately defined discriminatory practice in the CHRA. This is subject to the usual legal and discretionary considerations when the Tribunal is awarding damages, including but not limited to, avoiding double recovery to a complainant.

[150] Likewise, in theory, the Tribunal may also award up to $20,000.00 in general damages to a complainant for each respondent who has engaged in a statutorily defined discriminatory practice in sections 5-14.1; further, the Tribunal may grant an additional award of special damages of up to $20,000.00 for each proven, distinct discriminatory practice, as defined in sections 5-14.1, to a complainant for each respondent who engaged in that discriminatory practice wilfully or recklessly. In addition to this determination also being subject to the usual considerations when the Tribunal is awarding damages, the award of damages against more than one respondent may include consideration of the application of section 65 to a respondent employer, as applicable.

[151] Accordingly, where more than one legally separate respondent is responsible for engaging in a discriminatory practice (as they are defined by sections 5-14.1 of the CHRA), where multiple different discriminatory practices are proven against a respondent, or against more than one respondent, the total award of general and special damages for a substantiated complaint of discrimination under the CHRA may exceed $40,000.00. To this extent, Ms. Peters' motion is well-founded. However, the Tribunal has no jurisdiction to award general and special damages "per incident" or repeated instance within one discriminatory practice. In this case, the Tribunal has no authority to subdivide the discriminatory practice of sexual harassment into multiple practices of sexual harassment based on the factual findings it made about sexual harassment in the Liability Decision. How many "discriminatory practices" arise from Ms. Peters' complaint is determined by the

application of the CHRA which clearly states that sections 5-14.1 establish discriminatory practices.

[152] Two further points are relevant. The Tribunal does not award damages for each ground of discrimination in section 3 of the CHRA and the seriousness and/or repeated nature of the incidents is relevant to the Tribunal's remedial award but only to the assessment of the quantum of damages to be awarded for each proven, separate discriminatory practice. To the extent that Ms. Peters' motion improperly asks to expand the statutory language of "discriminatory practice" beyond how this term is defined and used in the CHRA, thereby further delineating the number of discriminatory practices for purposes of increased damage awards, her motion is dismissed.

[153] In the Liability Decision, I found Mr. Gordon to have engaged in one discriminatory practice, namely sexual harassment. In theory, his involvement is subject to a remedial award that is capped at $20,000.00 in general or special damages regardless of the seriousness or number of incidents that comprise that discriminatory practice. I say "in theory" due to Mr. Gordon's involvement because this ruling does not decide the issues of remedy for Mr. Gordon's sexual harassment of Ms. Peters beyond the application of the statutory cap.

[154] In the Liability Decision, I also found UPS to be subject to section 65(1) of the CHRA based on its own conduct in relation to Mr. Gordon's sexual harassment of Ms. Peters. However, as noted, it remains to be determined whether UPS engaged in the discriminatory practice of sexual harassment against Ms. Peters itself based on conduct separate from that of Mr. Gordon. I address this issue and how the Tribunal is to interpret and apply section 65(1) to both of the Respondents for purposes of making any order to pay damages in a related ruling. Should the Tribunal conclude that UPS engaged in the discriminatory practice of sexual harassment based on its own conduct, in additional to being liable for Mr. Gordon's conduct, any theoretical award of general or special damages is, likewise, statutorily capped at $20,000.00.

[155] Otherwise, to this point of the analysis, in the Liability Decision, I found UPS to have engaged in one discriminatory practice against Ms. Peters consisting of disability-grounded

discrimination based on adverse differentiation pursuant to paragraph 7(b) of the CHRA. UPS's conduct in this regard is subject to a theoretical award of special or general damages that is statutorily capped at $20,000.00. However, as noted, Ms. Peters did not seek special damages against UPS for this discriminatory practice; she confined her claim in this regard to general damages.

[156] In the course of this ruling, it became apparent that there is disagreement within the Tribunal's jurisprudence about whether any award of interest that the Tribunal may make is required to be made within the statutory cap or is a stand-alone award in the CHRA. The parties provided additional written submissions on this point. I also address the issue of whether the statutory cap applies to interest awards in a separate ruling.

[157] The Complainant's motion is dismissed, in part, and the Tribunal grants an interim declaratory order, subject to deciding the remaining alleged discriminatory practice against UPS for sexual harassment, as follows:

1. The maximum amount of general damages that the Tribunal may award pursuant to section 53(2)(e) of the CHRA for the discriminatory practice of sexual harassment that Mr. Gordon committed by pursuant to section 14 in this complaint is $20,000.00.
2. The maximum amount of special damages that the Tribunal may award pursuant to section 53(3) of the CHRA for Mr. Gordon's discriminatory practice pursuant to section 14 in this complaint is $20,000.00.
3. The maximum amount of general damages that the Tribunal may award pursuant to section 53(2)(e) of the CHRA against UPS for the discriminatory practice pursuant to section 7 in this complaint is $20,000.00.

[158] The Tribunal reserves its jurisdiction over all other remaining issues relevant to remedy in this case, including the order of any appropriate remedies.

Signed by

Kathryn A. Raymond, K.C.
Tribunal Member

Ottawa, Ontario
December 18, 2024

Canadian Human Rights Tribunal

Parties of Record

Tribunal File: T2201/2317

Style of Cause: Tesha Peters v. United Parcel Service Canada Ltd. and Linden Gordon

Ruling of the Tribunal Dated: December 18, 2024

Motion dealt with in writing without appearance of parties

Written representations by:

David Baker, Daniel Mulroy, Laura Lepine and Clare Budziak, for the Complainant

Aby Diagne, Sasha Hart and Ikram Warsame, for the Canadian Human Rights Commission

Nafisah Chowdhury, for the Respondent

Linden Gordon, for himself