Canadian Human Rights Tribunal

Tribunal canadien des droits de la personne

Citation: 2025 CHRT 2
Date: January 3, 2025
File No.: T2201/2317

Between:

Tesha Peters

Complainant

- and -

Canadian Human Rights Commission

Commission

- and -

United Parcel Service of Canada Ltd. and Linden Gordon

Respondents

Statutory Cap on Interest Ruling

Member: Kathryn A. Raymond, K.C.

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I. Overview of Interest Awards and the Statutory Cap in the CHRA

[1] The Tribunal's case law diverges on the issue of whether any interest awarded to a successful complainant is subject to the statutory cap of $20,000 in sections 53(2)(e) and 53(3) (the "statutory caps") in the *Canadian Human Rights Act* R.S.C., 1985, c. H-6 (CHRA). This divergence in the Tribunal's case law has existed for some time without being raised as an issue by a party and should be resolved.

[2] Tesha Peters, the Complainant, asked the Tribunal to decide how the statutory caps should be interpreted and applied for purposes of awarding damages. Ms. Peters also requested an award of interest on all monetary amounts awarded to her. The Tribunal may order an award of interest pursuant to section 53(4) of the CHRA. Ms. Peters' submissions, however, did not raise or address the issue about whether an award of interest should be subject to the statutory caps. The parties to this complaint were apparently unaware that the Tribunal's jurisprudence concerning interest took two different approaches to how interest should apply to certain damages. The Tribunal brought this issue to the attention of the parties and sought submissions so that all issues relevant to the statutory caps are decided in tandem.

[3] For the reasons below, I have decided that an award of interest pursuant to section 53(4) of the CHRA is not subject to the statutory caps found in sections 53(2)(e) and 53(3) of the CHRA. The statutory caps apply only to damages that can be awarded to a complainant pursuant to sections 53(2)(e) and 53(3) of the CHRA. Those damages may be awarded for pain and suffering ("general damages") pursuant to section 53(2)(e) of the CHRA or for a finding of wilful or reckless conduct by the Respondents ("special damages") pursuant to section 53(3) of the CHRA. The Tribunal is not required to consider interest as part of the compensation included in the computation of any such damage award. An award of interest is a separate discretionary award that the Tribunal may order. Interest can potentially be applied to all awards of monetary compensation that the Tribunal is authorized to make under section 53 of the CHRA, whether the order is for damages that are subject to the statutory caps in the CHRA or those that are not, such as damages for loss of income.

II. Background

A. Legislative Amendments to the CHRA in 1998

[4] The CHRA has always had a statutory cap on what may be described as "damages for the experience of discrimination". The CHRA was amended in June 1998. Prior to the 1998 amendments, the statutory cap applied to the Tribunal's authority to order the payment of "compensation" to a victim of discrimination. The statutory cap was $5,000. The authority to award compensation was contained in former section 53(3) of the CHRA. Former section 53(3) stated:

> 53(3) In addition to any order that the Tribunal may make pursuant to subsection (2), if the Tribunal finds that
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> (a) a person is engaging or has engaged in a discriminatory practice wilfully or recklessly, or
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> (b) the victim of the discriminatory practice has suffered in respect of feelings or self-respect as a result of the practice,
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> the Tribunal may order the person to pay such compensation to the victim, not exceeding five thousand dollars, as the Tribunal may determine.
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> [Emphasis added.]

[5] Former section 53(3) established the Tribunal's power to "order the person to pay such 'compensation' to the victim, not exceeding five thousand dollars, as the Tribunal may determine" for hurt feelings or loss of self-respect and for willful or reckless conduct. The word "compensation" was not defined in the CHRA. The CHRA stated nothing about interest.

[6] In 1998, the CHRA was amended to increase the statutory cap to $20,000. The amendments included wording changes within section 53. A new section 53(2)(e) allowed the Tribunal to include the term: "that the person compensate the victim, by an amount not exceeding twenty thousand dollars, for any *pain or suffering* that the victim experienced as a result of the discriminatory practice". Section 53(3) changed from a provision authorizing compensation for hurt feelings and willful or reckless conduct to a provision that only concerned wilful or reckless conduct, allowing the Tribunal to award up to $20,000 in special

damages if a respondent engaged in such conduct. As amended in 1998, sections 53(2) and 53(3) state:

> 53(2) If at the conclusion of the inquiry the member or panel finds that the complaint is substantiated, the member or panel may… make an order against the person found to be engaging in 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:
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> (a) that the person cease the discriminatory practice and take measures, in consultation with the Commission on the general purposes of the measures, to redress the practice or to prevent the same or a similar practice from occurring in the future…
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> (b) that the person make available to the victim of the discriminatory practice… the rights, opportunities or privileges that are being or were denied the victim as a result of the practice;
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> (c) that the person compensate the victim for any or all of the wages that the victim was deprived of and for any expenses incurred by the victim as a result of the discriminatory practice;
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> …
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> (e) that the person compensate the victim, by an amount not exceeding twenty thousand dollars, for any pain and suffering that the victim experienced as a result of the discriminatory practice.
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> 53(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 in or has engaged in the discriminatory practice wilfully or recklessly.

[7] At the same time, section 53(4), which authorizes the Tribunal to award interest, was added to the CHRA. Section 53(4) provides as follows:

> 53(4) Subject the rules made under section 48.9, an order to pay compensation under this section may include an award of interest at a rate and for a period that the member or panel considers appropriate.

B. This Complaint

[8] The Tribunal decided that Ms. Peters' complaint of discrimination was substantiated in *Peters v. United Parcel Service Canada Ltd. and Gordon* 2022 CHRT 25 (the "Liability Decision"). The Tribunal reserved jurisdiction to decide issues that the parties had raised concerning remedy. Ms. Peters asks the Tribunal to award various remedies to her that include, but are not limited to, monetary awards of general damages, special damages, loss of income, expenses and interest on all monetary amounts. The Canadian Human Rights Commission (the "Commission") seeks a number of public interest remedies.

[9] The remedial issues to be decided included a motion by Ms. Peters about how the statutory caps of $20,000 on general and special damages in sections 53(2)(e) and 53(3) of the CHRA are to be interpreted and applied to her complaint. In *Peters v. United Parcel Service of Canada Ltd. and Gordon* 2024 CHRT 140 (the "Statutory Cap Ruling"), I determined that the amounts of compensation Ms. Peters may be awarded in both general and special damages are subject to a statutory cap of $20,000 that applies to each proven discriminatory practice defined in sections 5–14.1 of the CHRA.

[10] The unresolved difference of opinion in the Tribunal's jurisprudence in this ruling concerns whether an award of interest is subject to the statutory caps of $20,000 on general damages for pain and suffering under section 53(2)(e) and special damages for wilful or reckless conduct under section 53(3) of the CHRA. The Tribunal has held that interest is to be included in the computation of damages awarded for general damages pursuant to sections 53(2)(e) and 53(3) of the CHRA. However, in other cases, the Tribunal has ordered that interest be paid on general and special damages as a separate award, without applying the statutory caps and without regard for whether the statutory caps should apply. The Tribunal has not been asked to resolve this difference of opinion in its jurisprudence by a party before the Tribunal, nor has the Tribunal done so on its own motion.

[11] In my view, this issue needs to be resolved. I provided the parties with a non-exclusive list of Tribunal decisions for their consideration demonstrating that interest is sometimes made subject to the statutory caps and sometimes not. I invited additional written

submissions for the purpose of this ruling. I thank counsel for their well-prepared submissions with detailed references to the case law.

[12] I emphasize that the reasons in the Statutory Cap Ruling form part of the reasons applicable to this ruling. This ruling is an extension of the Statutory Cap Ruling. These reasons are truncated to avoid the repetition of relevant information, relying instead on what was decided or stated previously for efficiency. The Liability Decision also forms part of these reasons, as that decision provides relevant background.

III. The Issue

[13] The overall issue I must decide is this: Is an award of interest ordered pursuant to section 53(4) of the CHRA upon an award of general damages pursuant to section 53(2)(e) or an award of special damages pursuant to section 53(3) of the CHRA subject to the $20,000 statutory caps found in sections 53(2)(e) and 53(3) of the CHRA? It is not suggested that other monetary awards that may be ordered as terms under section 53 of the CHRA engage the issue of whether interest is subject to the statutory cap.

IV. Position of the Parties

A. Ms. Peters' Position

[14] Ms. Peters takes the position that interest awards on general or special damages are not limited by the application of the $20,000 statutory cap found in sections 53(2)(e) or 53(3) of the CHRA. She says that a complainant is entitled to interest on compensation ordered pursuant to both section 53(4) of the CHRA and Rule 46 of the *Canadian Human Rights Tribunal's Rules of Procedure, 2021*, SOR/2021-137 (the "Rules"). Ms. Peters points out that neither section 53(4) nor Rule 46 imposes any statutory limit on interest by reason of the statutory caps in the CHRA.

[15] Ms. Peters agrees that there is inconsistency among Tribunal decisions about whether interest on general and special damages is subject to the statutory cap. She contrasts *Alizadeh-Ebadi v. Manitoba Telecom Services Inc*., 2017 CHRT 36, at para 227

[*Alizadeh-Ebadi*] where the Tribunal awarded $20,000 under section 53(2)(e) of the CHRA, and $20,000 under section 53(3), together with “interest thereon calculated from January 1, 2002 to June 30, 2015”. She compared this case to *Philps v. Ritchie-Smith Feeds Inc*., 2021 CHRT 9 at para 86 [*Philps*] and *Luckman v. Bell Canada*, 2022 CHRT 18 at para 115 [*Luckman*], both of which held that the accrual of interest on an award under sections 53(2)(e) and 53(3) of the CHRA “shall not result in a total award that surpasses the statutory maximums prescribed therein”.

[16] Ms. Peters made submissions about the legislative evolution of section 53(4) of the CHRA. Ms. Peters points out that the idea or premise that interest should be subject to the statutory caps found in sections 53(2)(e) and 53(3) of the CHRA arose in Tribunal cases about complaints that predated the June 1998 amendment of the CHRA. This was while the statutory cap used to be $5,000 and the CHRA did not have a provision authorizing an award of interest like section 53(4). As explained above, the express authority of the Tribunal to award interest did not exist in the CHRA until the 1998 amendments. Ms. Peters submits that, in pre-1998 amendment cases, the courts permitted the Tribunal to order interest on damages awarded to a complainant as part of the “compensation” the Tribunal had the authority to order.

[17] Ms. Peters asserts that this earlier group of cases, which have continued to be adopted in recent cases like *Philps* and *Luckman*, have no application to section 53(4) of the CHRA and post-1998 or current complaints before the Tribunal. Ms. Peters submits that, in post-1998 cases, the Tribunal has, at times, relied on outdated decisions made before the amendments to the CHRA in 1998. It is her key submission that these cases are no longer good law. She argues that in applying these pre-1998 cases the Tribunal has incorrectly interpreted the content and purpose of section 53(4) of the CHRA. She submits that Tribunal decisions since 1998 that award interest subject to the statutory cap should be distinguished and no longer followed on this basis.

[18] Ms. Peters identified case law that she submits is outdated: *Warman v. Winnicki,* 2006 CHRT 20, at para 187 [*Warman*]; *Hebert v. Canadian Armed Forces,* 1993 CanLII 352 (CHRT) [*Hebert CHRT*]; *Canada (Attorney General) v. Patricia*, 1996 CanLII 3908 (FC) [*Hebert FC*]; *Canada (Attorney General) v. Morgan (C.A.)*, 1991 CanLII 13184 (FCA), [1992]

2 FC 401 [*Morgan*]; *Chopra v. Canada (Attorney General*) 2006 FC 9 [*Chopra FC*], at paras 85 and 86; *Chopra v. Canada (Department of National Health and Welfare)* 2004 CHRT 27 [*Chopra CHRT*] at paras 54 and 61; and *Chopra v. Canada (Attorney General)*, [2008] 2 FCR 393, at para 53 [*Chopra FC No. 2*]. Ms. Peters argues that cases like *Hebert FC,* which is a 1996 Federal Court decision, are not relevant to the post-1998 statutory regime in the CHRA and the new independent power in section 53(4) for the Tribunal to award interest. She includes, as another example, *Chopra FC*, which was decided in 2006 but concerns a complaint that was filed before the CHRA was amended in June 1998.

[19] Ms. Peters submits that the Tribunal must interpret section 53(4) of the CHRA and the CHRA as a whole in line with the Supreme Court of Canada's principles for interpreting human rights legislation. Ms. Peters cites several decisions of the Supreme Court of Canada stating these principles: *CN v. Canada (Human Rights Commission),* [1987] 1 S.C.R. 1114 at p. 1134 [*C.N.*], and *Canada (Canadian Human Rights Commission) v. Canada (Attorney General)*, 2011 SCC 53, at para 33 [*Mowat SCC*]. Ms. Peters cites the Tribunal's decision in *N.A. v. 1416992 Ontario Ltd. and L.C*., 2018 CHRT 33 at para 331 [*N.A*.] as an example where the Tribunal accepted that the principles of statutory interpretation decided by the Supreme Court of Canada are applicable to human rights legislation.

[20] In this regard, Ms. Peters submits that *N.A.* requires the Tribunal to ascertain Parliament's intent when it added a separate power to award interest in section 53(4) of the CHRA. Ms. Peters says that section 53(4) of the CHRA should be interpreted as an independent section authorizing interest awards. Section 53(4) does not reference the wording "by an amount not exceeding twenty-thousand dollars" which creates the statutory caps in sections 53(2)(e) and 53(3). Ms. Peters says that there is no provision in the CHRA which has the effect of limiting an interest award based on the statutory caps. She says that it is reasonable to infer that this was an intentional omission by Parliament.

[21] Ms. Peters points out that, in the pre-1998 era, when interest was awarded, the power to award interest was seen by the Tribunal as implicit in the power to award general and special damages where it was found to be subject to the limits of the statutory caps. Ms. Peters submits that Parliament must have intended to make a change to unfetter interest amounts from the statutory caps.

[22] Ms. Peters argues that the ability to award interest without statutory limits is consistent with the Supreme Court of Canada's decisions in *C.N*. and *Mowat SCC*, which emphasize that the CHRA is to be given a fair, large and liberal interpretation. She submits that, in contrast, a statutory limit on the award of interest would minimize the rights entrenched in the CHRA and is unsupported by the text of the statute.

[23] Ms. Peters further submits that section 53(4) must be interpreted as including all successful complainants before the Tribunal, which is in the interests of justice and a requirement based on the instruction of the Supreme Court of Canada in *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65 [*Vavilov*] at para 129. By "including all successful complainants", Ms. Peters means that section 53(4) is to be interpreted as also applying to complainants who receive the full amount of $20,000 in damages up to the statutory cap under both sections 53(2)(e) and 53(3). These complainants will have experienced the most egregious discrimination. Ms. Peters says that it would be profoundly unfair and contrary to the CHRA for complainants who have experienced the worst of discrimination and harassment to effectively lose their entitlement to an interest award. They would be treated differently than complainants whose damage awards under the statutory caps allow room for an award of interest. Ms. Peters urges me to reject the premise that Parliament intended to amend the CHRA in 1998 to authorize awards of interest in a manner that would lead to such an unjust result.

[24] Ms. Peters argues that applying the statutory cap "…has the effect of minimizing the provision's rights and enfeebling its impact - precisely what the Supreme Court of Canada has warned against". She asserts that this approach offends the principle that "administrative decision makers and reviewing courts alike must be concerned with the general consistency of administrative decisions" because "those affected by administrative decisions are entitled to expect that like cases will generally be treated alike": *Vavilov*.

B. The Commission's Position

[25] The Commission agrees that interest on general or special damages awarded pursuant to section 53(4) is not limited by the statutory caps in sections 53(2)(e) and 53(3) of the CHRA. The Commission asserts that the statutory caps are inapplicable to interest awards under section 53(4) of the CHRA.

[26] The Commission agrees with Ms. Peters about the common law history of interest awards under the CHRA. The Commission submits that Tribunal cases that include interest within the statutory cap on damages apply the older case law that predates the amendment of the CHRA in 1998. The Commission includes the following as examples: *Warman v. Kyburz*, 2003 CHRT 18 at para 113(iv) [*Kyburz*]; *Warman* at para 187, citing *Hebert CHRT*; *Gagnon v. Canada (Armed Forces)*, 2002 CanLII 78261 (CHRT) [*Gagnon*] at para 159(d); *Philps* at para 86; *Christoforou v. John Grant Haulage Ltd*, 2021 CHRT 15 [*Christoforou*] at para 112; *Kelsh v. Canadian Pacific Railway*, 2019 CHRT 51 [*Kelsh*] at para 203; and *Hughes v. Transport Canada*, 2018 CHRT 15 [*Hughes*] at chapter XVI, order 11. The Commission argues that these cases fail to properly consider the effect of the legislative amendment to the CHRA by the addition of section 53(4).

[27] The Commission includes in this category of pre-amendment cases those that were decided after the 1998 amendment but which relate to acts of discrimination that occurred prior to the amendment: *Chopra v. Canada (Attorney General)* (FCA), 2007 FCA 268 at para 53 [*Chopra FCA*]; *McAllister-Windsor v. Canada (Human Resources Development)*, 2001 CanLII 20691 at paras 84(ii) and (iii) (CHRT); *Premakumar v. Air Canada,* 2002 CanLII 23561 at para 108 (CHRT); and *Mowat v. Canada (Armed Forces)*, 2005 CHRT 31 [*Mowat CHRT*] at para 7.

[28] The Commission points to recent cases like *Luckman* (decided in 2022) where the Tribunal similarly held at para 115 that "[t]he accrual of interest on the award made should not result in a total award that surpasses the statutory maximums prescribed in the CHRA". The Commission submits that there is an absence of any reasoning in *Luckman* to explain the Tribunal's interpretation of section 53(4) of the CHRA; there is no mention of the 1998 amendments, section 53(4) of the CHRA or any related case law from before or after the

1998 amendments to support the order limiting interest. The Commission argues that *Luckman* should be given no precedential value on this issue.

[29] The Commission makes the same argument about all other Tribunal decisions post-dating the 1998 amendment of the CHRA that reach similar conclusions without discussing the effect of the 1998 amendments or distinguishing those Tribunal decisions where interest is ordered on damages under section 53(4) and is not capped. The Commission highlights that many Tribunal cases after the amendment in 1998 award interest pursuant to section 53(4) as a separate amount in addition to general or special damages without making interest subject to the statutory cap under sections 53(2)(e) and 53(3) of the CHRA.

[30] The Commission refers to *First Nations Child & Family Caring Society of Canada et al v. Attorney General of Canada (representing the Minister of Indigenous and Northern Affairs Canada)*, 2019 CHRT 39 [*First Nations*] at paras 245–257 where the Tribunal awarded the maximum award of $20,000; at paras 271–276, the Tribunal then ordered that interest be awarded on top of the maximum awards. The Commission points out that this decision was judicially reviewed in *Canada (Attorney General) v. First Nations Child and Family Caring Society of Canada*, 2021 FC 969; ultimately an appeal of that decision to the Federal Court of Appeal was withdrawn: *AGC v. First Nations Child and Family Caring Society of Canada et al* (Federal Court of Appeal File No. A-290-21). The Commission submits that while the award of interest was not specifically challenged in the subsequent proceedings, the Federal Court raised no concern about the Tribunal's award of interest. The Commission cites *Alizadeh-Ebadi* at paras 224 and 227 as another example of the Tribunal making interest a stand-alone award.

[31] The Commission also highlights cases where the Tribunal did not state anything to the effect that the accrual of interest on the amounts awarded could not surpass the statutory maximums under section 53(2)(e) or 53(3) of the CHRA. These are cases where the amounts awarded for general and special damages did not reach the statutory caps as they did in *First Nations*: *André v. Matimekush-Lac John Nation Innu*, 2021 CHRT 8 at paras 232–234; *Cassidy v Canada Post Corporation & Raj Thambirajah*, 2012 CHRT 29 at paras 208 and 210 [*Cassidy*]; *Abadi v. TST Overland Express*, 2023 CHRT 30 [*Abadi*] at paras 295 and 297–299; *O'Bomsawin v. Abenakis of Odanak Council*, 2017 CHRT 4

[*O'Bomsawin*] at paras 107 and 108; and *Duverger v. 2553-4330 Québec Inc. (Aéropro)*, 2019 CHRT 18 [*Aeropro*] at paras 322–324.

[32] The Commission also reviewed several decisions of the Federal Courts which have commented upon the effect of the 1998 amendments: *Chopra FCA* at para 53 and *Canada (Canadian Human Rights Commission) v. Warman*, 2012 FC 1162 [*Warman FC*] at para 19.

[33] The Commission submits that limiting interest to the statutory caps contradicts the remedial purposes of the CHRA, undermines the Tribunal's discretionary power to award interest on compensation and conflicts with the objective of awarding interest pursuant to section 53(4). The Commission relies on *Willcott v. Freeway Transportation Inc*, 2019 CHRT 29 at para 279, citing *Aeropro* at para 318. Both decisions recognize that the objective of awarding interest is to prevent "…the person found to have engaged in a discriminatory practice from benefiting from deadlines triggered by the quasi-judicial process and especially, to fairly compensate the victim of the discriminatory practice for the prejudice he or she has suffered and consequently, for the delay in being compensated". In short, the Commission submits that the purpose of awarding damages and interest is to put the complainant in the same position that they would have been in but for the loss arising from discrimination*: Apotex Inc v. Wellcome Foundation Ltd. (C.A.)*, 2000 CanLII 16270 (FCA) at paras 121–125. The Commission submits that applying the statutory caps to interest means that "the more 'pain and suffering' a complainant has experienced, the less they would be compensated for it".

C. The Respondent's Position

[34] The Respondent, United Parcel Service of Canada Ltd (UPS), takes the position that any interest award made pursuant to section 53(4) is subject to the statutory caps in sections 53(2)(e) and 53(3) of the CHRA. UPS submits that interest is not awarded in addition to the amounts of general and special damages permitted by the CHRA. UPS submits that its position is supported by the wording in section 53 of the CHRA and the Tribunal's prior decisions in *Luckman* and *Philps.*

[35] UPS says that the Tribunal has already considered this issue in those cases and decided that the statutory caps in the CHRA are inclusive of interest. UPS submits that Ms. Peters' case should be decided in a manner that is consistent with those decisions, as consistency is in the interest of justice. UPS also cites *Vavilov,* at para 129*,* where the Supreme Court of Canada confirmed that administrative tribunals and reviewing courts must be concerned with the consistency of administrative decisions.

[36] UPS submits that the Tribunal's decisions in *Alizadeh-Ebadi* and *First Nations* are of no application because the Tribunal was not "live" to the statutory cap issue and did not provide an analysis of this issue. UPS submits that *Chopra FCA* and *Warman FC* merely confirm the fact that the CHRA was amended in 1998 and, likewise, are of no application.

[37] UPS urges that I follow the Tribunal's decisions in *Luckman* and *Philps.* UPS says that the Tribunal determined in those cases that an award of interest on an order to pay compensation should not result in an award that exceeds the statutory maximums. UPS points out that the Tribunal took this approach even though the Tribunal ordered that interest continue to accrue post-judgment until the compensation was paid.

[38] UPS submits that the Tribunal should reject Ms. Peters' characterization of section 53(4) of the CHRA as an "independent provision". UPS points out that section 53(4) states expressly that it relates to orders to pay compensation made under section 53. UPS submits that section 53(4) must, therefore, be read within the context provided by the entirety of section 53.

[39] UPS submits that wording differences within the various subsections of section 53 of the CHRA demonstrate that interest is intended to be subject to the statutory caps. The words "may include" and "in addition to" are placed in different subsections within section 53. UPS submits that the presence or absence of these words within a statutory scheme is significant and impacts how the statute is to be interpreted. UPS says that the significance of the use of these words is that "include" and "in addition to" have opposite meanings. UPS says that these wording choices indicate a different intention by Parliament in different subsections within section 53 of the CHRA. UPS cites the Alberta Court of Appeal's decision in *Macdonald Communities Limited v. Alberta Utilities Commission*, 2019 ABCA 353

(CanLII) as support for its position that the distinction between “includes” and “in addition to” is determinative of an issue of statutory interpretation.

[40] UPS explains that section 53(2) of the CHRA authorizes the Tribunal to award general damages not exceeding $20,000; section 53(3) of the CHRA then provides the Tribunal with the ability to order the payment of special damages “in addition to” the general damages the Tribunal may order pursuant to section 53(2). UPS points out that the next subsection in the CHRA, section 53(4), which authorizes an award of interest, reverts back to the language of “may include” and omits the words “in addition to”. UPS emphasizes that section 53(4) states that “…an order to pay compensation ‘under this section’ ‘may include’ an award of interest at a rate and for a period that the [Tribunal] considers appropriate.” UPS submits that, if Parliament intended that interest be awarded “in addition to” the compensation available pursuant to sections 53(2)(e) and 53(3) of the CHRA, it would have chosen to include the words “in addition to” instead of “may include”.

[41] In a related argument, UPS submits that the wording in section 53(4) “under this section may include” refers to all of section 53 and must be respected. UPS says that if the Tribunal interprets section 53(4) as authority to award interest “in addition to” the jurisdiction it has to award compensation not exceeding $20,000 in sections 53(2)(e) and 53(3), the Tribunal would effectively rewrite section 53, which the Tribunal cannot do.

[42] UPS says that the argument that the CHRA is to be given a broad and liberal interpretation does not give the Tribunal the jurisdiction to rewrite section 53(4). UPS submits that, unless and until Parliament changes the CHRA, the statutory caps in sections 53(2)(e) and 53(3) apply to all compensation awarded pursuant to those sections, including any interest award made “thereon”.

V. Analysis

A. Approach to Determining the Intent of Parliament

[43] The pivotal issue here is whether Parliament intended that the statutory cap apply to interest on certain damage awards when it amended the CHRA in 1998 to expressly permit

the Tribunal to award interest by adding section 53(4). This requires an exercise of statutory interpretation. In this regard, as recognized in *Rizzo & Rizzo Shoes Ltd. (Re*), [1998] 1 SCR 27 [*Rizzo*] at para 21, “Today there is only one principle or approach, namely, the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament” (citing Elmer Driedger in *Construction of Statutes* (2nd ed. 1983) at p. 87).

[44] Ms. Peters submits that Parliament did not intend for interest to be subject to the statutory cap after the amendment of the CHRA. UPS submits that Parliament intended that damage awards that had been subject to the statutory cap in the case law would continue to be so.

[45] At the time of the amendments, Parliament also clarified the purpose of general and special damages pursuant to newly formulated sections 53(2)(e) and 53(3). Parliament partially reorganized section 53, including the wording relied upon by UPS for its position on this point of law. UPS argues that Parliament’s intent that the statutory cap apply to interest is found by reading section 53 as a whole, focusing on the words “may include” and “in addition to” in the various relevant provisions within section 53. UPS suggests an interpretation of these provisions that it submits is consistent with an intention by Parliament that interest would be subject to the statutory cap.

[46] There is no express statutory language in section 53(4) of the CHRA that speaks directly or indirectly to the issue of whether interest is subject to the statutory cap. As a reminder, section 53(4) states only this: “53(4) Subject the rules made under section 48.9, an order to pay compensation under this section may include an award of interest at a rate and for a period that the member or panel considers appropriate”. Parliament clearly intended that the Tribunal have the authority to award interest because it amended the CHRA to include a provision that expressly permits an award of interest. But there is no wording in section 53(4) that expressly links that section to the statutory caps on damages in sections 53(2)(e) and 53(3). I need to determine whether Parliament intended for the statutory cap to apply to interest, which is disputed here as illustrated by the parties’ conflicting positions, including UPS’s submissions respecting the existence of other wording providing guidance in section 53. This requires an interpretative analysis of the CHRA.

[47] In *Mowat* SCC, the Supreme Court of Canada structured its interpretative analysis around text, reading the words of the provision according to their "grammatical and ordinary sense", in their entire context, given the statutory purpose, "harmoniously with the scheme and object of the" statute. In that case, "their entire context" included the legislative history of the CHRA, the Commission's longstanding position that there was a lack of legal authority to award costs in the CHRA (the issue in that case) and parallel provincial and territorial legislation. Determining what Parliament's intent most likely was in these circumstances involves consideration of the statutory language as it exists (the text), the entire context (here, the legislative evolution of interest under the CHRA, including the common law that appears to have led to the addition of the statutory language respecting interest to the CHRA in 1998, and the context provided by the remainder of related amendments to the statutory language in the CHRA) and the legislative scheme and overall purpose of the CHRA.

[48] The context in which the amendments to section 53 of the CHRA were made is this. There was no express language in the CHRA authorizing an award of interest. The courts had decided prior to the amendments that the statutory cap applied to interest because the courts found that interest could be awarded as part of "compensation", a word included in the previous wording in former section 53(3), but which was removed along with other changes to the text when the CHRA was amended. Parliament is presumed to be aware of these earlier decisions of the courts that held that the Tribunal had jurisdiction to award interest, but that interest is subject to the statutory cap. As was held in *2747-3174 Québec Inc. v. Quebec (Régie des permis d'alcool)*, 1996 CanLII 153 (SCC), [1996] 3 SCR 919 at para 237:

> 237 The legislature is presumed to be competent and to have knowledge of all the legislation and case law in existence at the time a statute is enacted: *The Queen v. Inhabitants of Watford* (1846), 9 Q.B. 626, 115 E.R. 1413, at p. 1417 (*per* Lord Denman C.J.). This presumption was expressed as follows by *Driedger on the Construction of Statutes, supra*, at pp. 156-57:
>
> The legislature is presumed to know all that is necessary to produce rational and effective legislation. This presumption is very far-reaching. It credits the legislature with the vast body of knowledge of which judicial notice may be taken as well as anything contained in briefs or reports tabled with legislation. The legislature is presumed to have a mastery of existing law, both

> common law and statute law, as well as the case law interpreting statutes. It is also presumed to have knowledge of practical affairs….
>
> Logically, the substance of what the legislature is presumed to know must be knowledge that was available to it at the time the legislation was enacted.
>
> [Emphasis added.]

[49] The interpretation of the Tribunal's jurisdiction to award interest provided by the case law prior to the amendments is, therefore, part of the legislative evolution of the CHRA and a relevant consideration. Parliament does not add new provisions or make amendments needlessly.

[50] The issue is what did Parliament intend to accomplish or remedy when it added section 53(4) to the CHRA? It seems that there are two options. One potential legislative intent is that Parliament wished to make the existing treatment of interest (including the application of the statutory caps) established in the common law explicit. The other possible parliamentary intention was to affirm and expand the interest provisions so that interest would be unfettered by the statutory caps.

[51] If Parliament was satisfied with the interpretation provided by the case law decided prior to the 1998 amendments, it would seem more likely that Parliament intended to confirm the law created by those early decisions when it amended the CHRA and less likely that Parliament's intention was to change the law. It is also possible that Parliament wished to correct a misapprehension arising from those early court decisions.

[52] Given the absence of express language in section 53(4) about the statutory cap and the arguments raised by the parties, I must decide which was more likely: that Parliament was satisfied with the interpretation respecting interest provided by the prior case law or that it was not. I cannot determine with certainty whether Parliament wished to confirm or change the common law applying the statutory caps to interest because there is no express language about the statutory caps in section 53(4) or elsewhere in the CHRA. Unlike *Mowat SCC*, I do not have extrinsic materials as evidence before me to assist in determining Parliament's intent from the legislative history respecting the amendments. Further, the Commission does not appear to have taken a position respecting this issue before. I need to consider all of the new language that was added that is relevant to this issue and assess

the possibility that Parliament was simply interested in confirming the state of the law or, conversely, wished to change the law or whether it intended to correct a misapprehension about its intentions. A misapprehension requires that there be an issue that could give rise to dissatisfaction with the conclusions reached in the pre-amendment case law that decided the jurisdictional issue. Further, Parliament could have been unconcerned about whether the prior interpretation by the courts was a misapprehension, but nonetheless been dissatisfied with the conclusions reached.

[53] The analysis of the pre-amendment case law engages two distinct issues, which should not be conflated because they involve different considerations. Those two issues are: 1) whether the Tribunal had the statutory authority to award interest prior to the addition of section 53(4) of the CHRA, and 2) whether the statutory caps that the courts had applied to interest awards should continue to apply (the “two conclusions” in the pre-amendment interpretative cases).

[54] In sum, determining the intention of Parliament in 1998 requires not only an exercise of statutory interpretation of the amended text but also a consideration of the legislative evolution of section 53(4) of the CHRA, which in this case appears to include the historical context provided by the case law at the time the amendments to section 53 were made. This context primarily consists of decisions of the Federal Courts that concluded that the Tribunal has the authority to award interest on general and special damages and that the statutory cap applied to interest. These two conclusions are considered to assess whether it is more or less likely that there was an outcome or problem with the law that Parliament may have wished to change. I do not have direct evidence of what Parliament’s intention was, only the case law, the former and amended text of the CHRA and the context provided by the CHRA itself.

[55] The need to assess the historical context provided by the case law places me in the position of identifying whether there could have been a problem arising from the decisions of the Federal Courts prior to the amendments. The Federal Courts have the authority and jurisdiction to issue binding decisions upon this Tribunal. If a decision of a federal court is applicable to a question of law before this Tribunal, the Tribunal is bound to follow the decision of the Federal Court.

[56] I do not decide here that prior decisions of the Federal Courts were wrongly decided and not binding at the time. They were binding decisions. However, I am required to consider the most probable reasons for the amendments to the CHRA. I am effectively deciding whether or not these prior decisions are still binding decisions after the amendments, assuming I am persuaded that Parliament wished to change the law or may have been dissatisfied with the state of the law and amended the CHRA for that reason. I review decisions of the Federal Courts in these reasons for the limited purpose of deciding this ruling because I have an obligation to resolve the issue before me. The Supreme Court of Canada in *Vavilov* made it clear there should not be inconsistent administrative decisions. In this case, section 53(4) is sometimes interpreted by the Tribunal as including the statutory cap and sometimes is not. Interest awards are sometimes ordered by the Tribunal subject to the statutory cap and sometimes are not. The Tribunal cases that do implicitly find that section 53(4) includes the statutory cap appear to do so based on the pre-existing interpretation of former section 53(3) in the case law as it has been imported into the post-amendment case law. It would be an error for the Tribunal to not consider the context of the case law at the time the CHRA was amended because the case law primarily concerns decisions of the Federal Courts. Because of the need to assess Parliament's intent in these circumstances, I am required to analyze the amended statutory language and the relevant context available to me which includes what happened in or resulted from those pre-amendment decisions.

B. A Note on Terminology

[57] When I refer to the "pre-June 1998" approach or "pre-amendment case law", I include decisions at the federal court level and the Tribunal cases that originally concluded that interest could be awarded by the Tribunal prior to the addition of section 53(4) to the CHRA. In general, I also include Tribunal cases decided after the CHRA was amended to include section 53(4), but which involved complaints that arose prior to June 1998, where the Tribunal decided to include interest as part of damages awarded pursuant to the former section 53(3) of the CHRA, and I include those Tribunal decisions that have awarded interest since based on this now historic approach.

[58] To begin, the section of the ruling immediately below explaining the “pre-June 1998” approach addresses the origin of the premise that interest is subject to the statutory caps.

C. Pre-Amendment Treatment of Interest Awards at the Tribunal

(i) Case Law: The Origin of the Application of the Statutory Cap to Interest

[59] The issue about whether tribunals have the authority to award interest is not new. In 1987, the Federal Court of Appeal decided that the Canada Labour Relations Board had the jurisdiction to order interest on a loss of income award notwithstanding that this authority was not expressly contained in the Canada Labour Board’s enabling statute in *Re C.B.C. and Broadcast Council, C.U.P.E.* 1987 CanLII 9035 (FCA), [1987] 3 F.C. 515 [*Canadian Broadcasting*]. The jurisdictional issue in *Canadian Broadcasting* was based on the wording of paragraph 96.3(c) of the *Canada Labour Code* which authorized the payment of “compensation” that was “equivalent” to the remuneration that would have been paid but for the employer’s contravention of the *Canada Labour Code*. The Federal Court of Appeal in *Canadian Broadcasting* defined the relevant terms “compensation” and “equivalent” and arrived at the conclusion that interest could be awarded as part of compensation because the compensation the Board could order was expressly intended to be equivalent to what would be awarded if interest were included. This was based on the “…notion [that] adequately compensating the victim must… include a reasonable return on the money of which the victim has lost the use by reason of the discriminatory practice” (*Morgan* at p. 437). [Emphasis added.]

[60] *Canadian Broadcasting* does not apply here because the CHRA does not employ the same statutory language. However, the case serves as a reminder of the need to define statutory terms in the course of interpreting legislation.

[61] Beginning in 1991, the Federal Court and the Federal Court of Appeal began to include interest awards within the authority of this Tribunal to order “compensation” under what was then section 53(3) of the CHRA, although former section 53(3) did not mention interest. As a reminder, former section 53(3) established the power granted to the Tribunal

to "…order the person to pay such compensation to the victim, not exceeding five thousand dollars, as the Tribunal may determine". [Emphasis added.] As explained above, "compensation" was not defined in the CHRA. Several federal cases decided that interest was "compensation" and that the Tribunal therefore had the jurisdiction to award interest as a type of compensation. Effectively, "compensation" was considered to mean both "general damages" and interest on the amount of "general damages" in the pre-1998 amendment context.

[62] Several Tribunal cases that include interest as part of general damages, including recent cases, cite *Hebert FC* as the authority for doing so; others provide no reasons for taking this approach. *Hebert FC* appears to be the key case relied upon by the Tribunal in those decisions where the Tribunal has limited the award of interest by reason of the statutory caps. The decision in *Hebert FC* is based on earlier decisions of the Federal Courts where the authority of the Tribunal to award interest originated.

(a) *Hebert FC*

[63] *Hebert FC* was decided in 1996 by the Federal Court before the CHRA was amended in 1998 to include section 53(4) authorizing the payment of interest. The Federal Court Trial Division heard a judicial review of a Tribunal decision which awarded the complainant the sum of $5,000 in general damages (up to the statutory cap) plus interest. The Federal Court ruled that damages under the former section 53(3) of the CHRA can only be awarded up to a total of $5,000 with interest included.

[64] The Federal Court in *Hebert FC* relied upon the decisions of the Federal Court of Appeal in *Morgan* and *Canada (Attorney General) v. Rosin (C.A.)*, [1991] 1 F.C. 391 [*Rosin*] and, in relation to interest on loss of income awards, *Canadian Broadcasting*. The portion of the decision in *Hebert FC* that addresses interest, at para 21, is fairly brief and is repeated in its entirety here:

> [21] Finally, I turn to the Tribunal's order regarding compensation under section 53 of the Canadian Human Rights Act which was for an amount of $5,000. plus interest thereon from and after the date of the Respondent Hebert's complaint. It was not disputed before me that I am bound in this

regard by *Canada (Attorney General) v. Morgan* where Mr. Justice MacGuigan wrote:

> This decision [*Canada (Attorney General) v. Rosin* 1990 CanLII 12957 (FCA), [1991] 1 F.C. 391 (C.A.)] settles the issue as to whether interest can be awarded on the award for hurt feelings... . It can be awarded, up to a total award (including interest) of $5,000,...

Here, the Tribunal erred in making an award of $5,000 plus interest. The resultant total award would inevitably exceed the statutory limit prescribed in subsection 53(3) of the *Act*.

[Emphasis added.]

[65] The Federal Court Trial Division in *Hebert FC* found that it was bound by *Morgan,* which was decided by the Federal Court of Appeal. As is apparent from the quote above, there was little to no analysis of the interest issue in *Hebert FC,* likely because the court concluded that it was bound by the decision in *Morgan* and the earlier decision of the Federal Court of Appeal in *Rosin.* Any analysis in *Morgan* and *Rosin* is, therefore, relevant.

(b) *Morgan*

[66] In *Morgan*, the Federal Court of Appeal reviewed a decision of what was then titled a "Canadian Human Rights Review Tribunal" (the "Review Tribunal"), which had the authority to review decisions of this Tribunal. In *Morgan*, the issues included whether the Tribunal had the jurisdiction to award interest on compensation for loss of wages and general damages. The Review Tribunal decided to change the remedy decision of the Canadian Human Rights Tribunal by increasing the amount of general damages awarded. The Review Tribunal also rescinded an earlier award of interest made by this Tribunal on general damages. The Review Tribunal concluded that the Tribunal did not have the authority to award interest by law.

[67] The majority of the Federal Court of Appeal consisting of Justices Mahoney and Marceau agreed that the Review Tribunal should not have interfered with the original decision to award interest on the payment of general damages ordered pursuant to the former section 53(3) of the CHRA which permitted damages for hurt feelings and loss of

self-respect. The majority found that, while there was no specific provision in the CHRA that gave the Tribunal the authority to award interest, there was authority “at law” to do so (without stating what that meant). The rationale adopted by the majority, however, was that the Tribunal had the power to ensure that the victim received adequate compensation and that this entitled the Tribunal to award interest.

[68] Underscoring its conclusion that interest was compensation, the majority in *Morgan* found that the Tribunal had no discretion respecting interest. Because the court concluded that interest was compensation, the majority of the court also held that interest should only be awarded “if necessary to cover the loss” and that the loss it was intended to cover had to be established by the evidence. I note that the concept that there must be proof of loss for purposes of receipt of interest has not been adopted in subsequent Tribunal decisions notwithstanding that this was a decision of the Federal Court of Appeal.

[69] The application of the statutory cap on interest was not touched upon by the majority of the court in *Morgan*. The impact of finding the authority to award interest as part of compensation for hurt feelings in former section 53(3) does not appear to have been considered by the majority. Justice MacGuigan, who wrote the dissenting opinion in *Morgan,* was the only Justice to acknowledge there was an implication that arose from including interest under former section 53(3): the implication of that decision was that interest became subject to the statutory cap. However, Justice MacGuigan did not analyze this issue in his reasons. He simply stated that interest was included in the $5,000 that could be awarded pursuant to former section 53(3).

[70] As a reminder, former section 53(3) provided that the Tribunal may order the person who engaged in a discriminatory practice to pay compensation to the victim, not exceeding $5,000, if the victim of the discriminatory practice had suffered in respect of feelings or self-respect as a result of the practice. *Morgan* is not a clear authority for the proposition that, prior to 1998, Parliament intended that interest be treated as part of compensation in addition to damages for feelings or loss of self-respect and that Parliament intended that the statutory cap in section 53(3) apply to interest awards upon general damages.

[71] *Hebert FC* followed *Morgan* and *Rosin. Morgan* followed the decision in *Rosin*. The reasons concerning the interest award in *Morgan* and *Hebert FC* are quite limited. While *Rosin* has not been recently cited by the Tribunal, the reasons in *Rosin* are, therefore, the most important.

(c) *Rosin*

[72] It was in *Rosin* that the Federal Court of Appeal first determined that interest could be included as part of the general damage award in former section 53(3) of the CHRA. The Federal Court of Appeal in *Rosin* interpreted "compensation" in section 53(3) as including interest based on "the law". The law the court referred to came from two sources. Both sources were case law, not the CHRA.

[73] The first source identified by the Federal Court of Appeal was the decisions of human rights tribunals. The Court of Appeal pointed out at p. 414 that "…awards for interest have been ordered frequently by human rights tribunals". This included decisions of provincial human rights tribunals that operate under different legislation than the CHRA. The Court cited decisions of this Tribunal including two that allowed interest on awards for hurt feelings and loss of respect pursuant to former section 53(3).

[74] It was not uncommon at that time for some Tribunal decisions to conclude that the Tribunal did have the authority to award interest, although it is apparent from *Morgan* that there was not complete agreement on this issue. The authority for an award of interest in the reasoning of these cases was far from clear as the CHRA said nothing about interest.

[75] Sometimes the Tribunal would state that interest was being awarded pursuant to the *Interest Act*. This was the case in the Tribunal decision under review in *Rosin*. In fact, the Federal Court of Appeal rejected the premise that the Tribunal could award interest pursuant to the *Interest Act,* instead holding at p. 413 that "…there is no specific provision expressly granting human rights tribunals the power to give interest…".

[76] Despite rejecting the Tribunal's rationale for finding that it had the authority to award interest, the Federal Court of Appeal did not explain why it concluded that the Tribunal could, in fact, award interest under the CHRA. The Court stated that it relied upon "the law"

apparently meaning case law. But having relied upon the decisions of human rights tribunals that awarded interest, there was no analysis by the Court in *Rosin* of why the Court thought that these decisions were correctly decided or were persuasive, apart from the fact that the Tribunal ordered interest. With the utmost respect to the Federal Court of Appeal in *Rosin*, while the Court no doubt agreed with the conclusion the Tribunal reached in some cases, it is not clear why the Court in *Rosin* believed it should interpret "compensation" in section 53(3) of the CHRA as including "interest" based on the existence of Tribunal decisions that had awarded interest, particularly given that it rejected the Tribunal's reasoning for its finding in that case that it had the authority to do so.

[77] The second source of law that the Court in *Rosin* relied upon was other decisions of the courts. At p. 414, *Rosin* noted that the courts, including the Federal Court of Appeal, had held that interest may be awarded in other contexts. The court cited *Minister of Highways for British Columbia v. Richland Estates Ltd*. (1973), 4 L.C.R. 85 (B.C.C.A.), an expropriation case, *Westcoast Transmission Company Limited v. Majestic Wiley Contractors Ltd*., 1982 CanLII 474 (BC CA) [*Westcoast*], a commercial arbitration decision and *Canadian Broadcasting*, the decision of the Federal Court of Appeal referenced above that concerned the interpretation of statutory wording in the *Canada Labour Code.*

[78] The other court decisions relied on in *Rosin* do not engage the statutory language in the CHRA. They appear to be cases where the courts held that the tribunal or administrative decision-maker had the same inherent jurisdiction to fashion a remedy as the courts of law possess. In the commercial arbitration case, *Westcoast,* the British Columbia Court of Appeal held that arbitrators could award interest because they "are to decide the dispute according to the existing law of contract and every right and discretionary remedy given to a court of law can be exercised by them." [Emphasis added.] It appears from this comment that the British Columbia Court of Appeal held that a commercial arbitrator has the same inherent jurisdiction to fashion a remedy on this subject as a court of law.

[79] The Federal Court of Appeal in *Rosin* does not identify the inherent jurisdiction of the courts or provide other reasoning for its own award. However, the court adopted *Westcoast*. Accordingly, *Rosin* implies that the court agreed that the courts have the inherent authority to award interest as part of compensation in an adjudicative process under statute by reason

of their own inherent jurisdiction and that this same inherent jurisdiction applies to this Tribunal.

[80] At para 36, the Federal Court of Appeal in *Chopra FCA* held 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”. Parliament has set out the kind of losses that are recoverable under the CHRA. Parliament did not set out interest as a kind of loss recoverable under the CHRA when it set out the kind of losses that were recoverable in the former section 53(3) of the CHRA. The Tribunal has no inherent jurisdiction as a court does. The Tribunal is a creature of statute. The authority for its jurisdiction must be found in its enabling legislation, the CHRA.

[81] As noted above, the court in *Rosin* stated that the authority to award interest existed “at law”. It appears that “the law” the court was referring to as its reason for concluding that the Tribunal could award interest was the common law and general jurisprudence about interest, which the court then read into former section 53(3). This conclusion is re-enforced by the court’s finding that “…there is no reason to interfere with this remedy, which is available to human rights tribunals pursuant to the wording of the statute as interpreted in the jurisprudence”. [Emphasis added.]

[82] The Federal Court of Appeal’s decision is, with the greatest of respect, not specific to the CHRA. The Court does not reference jurisprudence from the courts interpreting the CHRA, but rather other statutes. As explained, it does not appear that there was a Tribunal decision with reasons that were adopted by the Court about how to interpret former section 53(3). Rather, it appears that it was the fact that interest was ordered by the Tribunal and ordered by other administrative tribunals in different contexts that the Court in *Rosin* found persuasive. The Federal Court of Appeal found the jurisdiction of the Tribunal to award interest “…under the concept of compensation, for to deny it would be to fail to make the claimant whole again, especially in these days of high interest rates”.

[83] This outcome is clearly in the interest of justice and was a binding decision prior to the amendments to the CHRA. However, I observe that the Court’s reasons in *Rosin* did not address the fact that Parliament did not expressly include interest as the kind of loss that is

recoverable under the CHRA, while listing those that were. *Rosin* was issued in 1991. The Court did not appear to consider the principles that were later stated in 2007 in *Chopra FCA*. The Court did not define the words “interest” and “compensation” in the course of its reasons, unlike the approach the Court took to statutory interpretation in *Canadian Broadcasting.* The Court did not explain how it concluded that it was able to read the word “interest” into the word “compensation” in former section 53(3).

[84] With the utmost respect and the benefit and persuasiveness of more recent decisions that were issued about complaints prior to the 1998 amendments, namely, the Federal Court of Appeal in *Chopra FCA* in 2007 (deciding, in part, that the amendment to the CHRA increasing the maximum amount payable from $5,000 to $20,000 did not apply to discriminatory practices occurring prior to the amendment) and the Supreme Court of Canada in *Mowat SCC* in 2011 (addressed below, where “expenses” did not include “costs”), it is not plainly obvious from the wording of former section 53(3) of the CHRA that interest was intended to be part of compensation for hurt feelings and loss of respect, notwithstanding the binding conclusion of the Federal Court of Appeal in *Rosin* and the argument for justice demonstrated by its agreement with the conclusion that interest should be awarded. One could argue that, when Parliament used the term “compensation” in former section 53(3), Parliament intended the Tribunal to order compensatory damages, not interest, for feelings and loss of self-respect. Former section 53(3) authorized the Tribunal to award damages as compensation for the harmful effects of discrimination. Damages are intended to remediate harms caused by the acts and omissions of others (in this context, conduct contrary to the CHRA). Damages must be linked to the harm and be proven to the Tribunal as linked losses to be compensable.

[85] The compensatory damages in former section 53(3) have a specific statutory context by reason of the words in the provision identifying hurt feelings and self-respect. These damages are awarded to address a non-pecuniary loss or harm: hurt feelings and loss of respect.

[86] Interest is not a non-pecuniary loss. Interest applies to an award of damages to address the devaluation of this compensation which is a pecuniary loss; interest is not awarded for hurt feelings and loss of self-respect, only damages are.

[87] Today, interest is awarded pursuant to the CHRA to offset the loss of compensation a complainant experiences from the time they experience the discriminatory act and become entitled to compensation until the time they receive compensation for the harm they suffered: *Aeropro*. Interest is a means of restoring the devaluation (loss) of financial compensation that accrues over time to a successful complainant during the delay associated with the legal proceeding taken by that person to enforce their rights. Interest addresses the harm of the delay of receipt of a remedy; interest is not compensation for the harmful effects of the discrimination itself. It is not the same type of compensatory damages. It does not serve the same purpose as general damages but rather restores the value of the award.

[88] Prior to 1998, Parliament authorized remedies expressly in the CHRA but did not include interest expressly. It is a possibility that Parliament did not intend to grant the Tribunal the authority to award interest on damages prior to the decision in *Rosin*. Further, interest normally applies to an award of damages because it does not serve the same purpose as general damages. These points were not directly addressed by the Court in *Rosin*. In addition, it is not immediately clear, based on simply looking at the statutory language of the CHRA at the time, that Parliament intended that interest would be treated as part of compensation for hurt feelings and loss of self-respect pursuant to former section 53(3). The fact that the Federal Court of Appeal in *Rosin* relied upon case law without defining the meaning of key wording or engaging in a statutory analysis specific to the CHRA leaves these questions unanswered.

[89] Most significantly, the Court's reasons in *Rosin* focused exclusively upon the issue of whether the Tribunal had the jurisdiction to award interest on general damages in former section 53(3). The Court did not engage in its reasons in an analysis of the implications of finding the authority to award interest in the same provision as the provision authorizing general damages and the $5,000 statutory cap upon damages. The focus of the Court may have been upon finding a means by which the Tribunal could award interest. If so, the comment of the Supreme Court of Canada in *Mowat SCC* at para 62 would be responsive:

> …the *CHRA* has been described as quasi-constitutional and deserves a broad, liberal, and purposive interpretation befitting of this special status. However, a liberal and purposive interpretation cannot supplant a textual and contextual analysis simply in order to give effect to a policy decision different

> from the one made by Parliament: *Bell Canada v. Bell Aliant Regional Communications*, 2009 SCC 40, [2009] 2 S.C.R. 764, at paras. 49-50, *per* Abella J.; *Gould*, at para. 50, *per* La Forest J., concurring.

[90] This is a highly significant point to this ruling. Because the authority to award interest was found in section 53(3), and section 53(3) contained the statutory cap of $5,000, interest became subject to the $5,000 statutory cap that applied to damage awards in section 53(3), arguably by default.

[91] Interest usually starts to accrue from the date the discrimination (or other harm) occurred and continues to accrue post-judgment until the party owed compensation for the harm receives it. For example, the Tribunal's Rules contain language to this effect. Therefore, in the context of legal proceedings, it is somewhat, perhaps quite unusual, for an award of interest to be subject to a statutory cap on the amount of interest that may be awarded. However, it does not appear from the reasons in the case law that this outcome led to further consideration of the interpretation of former section 53(3) in *Rosin, Morgan* or in other cases prior to the amendment of the CHRA in 1998.

(ii) Decisions That Took a Different Approach to Interpretation

(a) Case Law

[92] The principle set out by the Federal Court of Appeal in *Chopra FCA* that a complainant is limited to the remedies which the Tribunal has the power to grant has been applied consistently with the effect that it is now very clear that tribunals created by statute do not have inherent jurisdiction like the courts. The Tribunal must find its jurisdiction and authority in its enabling legislation.

[93] In *Canada (Attorney General) v. Stevenson*, 2003 FCT 341 (CanLII), the Federal Court held that the Tribunal did not have the authority to order that a letter of apology be provided by a respondent unless that was expressly provided for in the CHRA or derived by necessary implication (the latter option was a general comment about necessity).

[94] As referenced briefly above, in *Mowat SCC,* the Supreme Court of Canada determined that legal expenses cannot be awarded by the Tribunal because the CHRA did

not expressly provide for the award of legal costs, only expenses. The Supreme Court of Canada decided that legal costs are not included in expenses incurred by reason of the discrimination, finding that “costs” has a distinct and separable meaning from “expenses”. The Court was not prepared to read “costs” into the word “expenses” or to find that the authority to award expenses that were legal costs could be derived by necessary implication from the Tribunal’s jurisdiction to make an award for expenses.

[95] More generally, the Supreme Court of Canada in *Mowat SCC* found that there was no free-standing right to reimbursement of expenses in the CHRA. Its reasons for this conclusion included that the word “expenses” was included in only certain remedial provisions in section 53 and because other wording in each provision provided limiting context to the contrary.

[96] Further, in *Mowat SCC,* the Supreme Court of Canada considered whether medical expenses incurred as a result of pain and suffering arising from discrimination could be ordered to be reimbursed. The Court held that expenses that are medical in nature (for pain and suffering) cannot be ordered to be compensated because section 53(2)(e), the subsection that authorizes general damages for pain and suffering, does not include the word “expenses”. The Court pointed out, however, that expenses can be awarded pursuant to those provisions in section 53 where the word “expenses” is expressly included.

(b) Conclusion

[97] I am not persuaded that a “liberal interpretation” of the CHRA, as required and applied by the Federal Courts and the Supreme Court of Canada in more recent decisions, would extend to permitting the award of interest along with damages in former section 53(3) of the CHRA if the issue (as the statutory language existed pre-June 1998) were to be decided today. It appears that a lack of an express provision in the CHRA authorizing the Tribunal to make a legally distinct type of award to address a loss in value arising from the delay of receipt of a monetary remedy would likely be determinative of the issue. It seems more likely that “compensation” pursuant to former section 53(3) of the CHRA was intended

to address hurt feelings and loss of self-respect and was not intended to include devaluation of that monetary award over time.

[98] In my view, pre-1998 amendment of the CHRA, the common law finding that the courts and certain other types of administrative decision-makers had the ability and discretion to award interest as part of compensation was generally reasonable. However, it seems that there may have been a misapprehension in this respect in the case of the CHRA to the effect that the Tribunal did not actually have the statutory authority and thereby the discretion to award interest pursuant to the CHRA, or, that Parliament did not intend that the statutory cap would apply to interest on general damages. The fact that the wording in section 53(4) was added as a separate provision and that other changes were made to section 53 represent significant changes by Parliament and suggest to some extent that there was dissatisfaction with the conclusions in the common law about interest awards under the statute.

[99] Even if I am mistaken and, assuming the rationale and conclusion in *Rosin* and the cases that followed *Rosin* are correct, and that the subsequent decisions of the Federal Court of Appeal and the Supreme Court of Canada described above make no difference to the result, the implication of the decision in *Rosin,* that the statutory caps applied to interest prior to 1998, remains unaddressed. I am not persuaded that, prior to the amendments, Parliament intended for the authority to award interest to be found in a provision that is subject to a statutory cap on damages. It is too unusual a departure from the usual practice respecting interest awards to presume that this was intended.

[100] I am required to decide the issues based on the wording of the CHRA and the case law today, not based on how the Federal Court of Appeal interpreted the pre-1998 version of the CHRA. In this regard, I am required to interpret and apply different statutory language than that in issue in *Rosin* and the cases that have followed it. However, I remain of the view that Parliament did not intend for the authority to award interest to be found in a provision that is subject to a statutory cap on damages. The reasons that this outcome appears to be an unreasonable interpretation of the CHRA following its amendment in 1998 are explained below.

(iii) Should *Hebert FC, Morgan* and *Rosin* continue to be applied?

[101] *Hebert FC*, *Morgan* and *Rosin* were superseded by the introduction of section 53(4) of the CHRA to the extent that section 53(4) removes any doubt about whether the Tribunal has the jurisdiction to award interest. In enacting section 53(4), Parliament formulated new statutory law to authorize an award of interest. Whether Parliament intended to confirm the pre-amendment case law that awarded interest, or to clarify or correct a misapprehension in the case law in this respect or to correct an omission in the CHRA, the fact is that the CHRA was amended to provide the Tribunal with express authority to award interest. The issue that remains is whether Parliament's intentions in amending the CHRA included changing the law or correcting a misapprehension in the case law by unfettering an award of interest from the statutory caps in former section 53(3).

[102] Accordingly, I cannot conclude that *Hebert FC*, and thereby implicitly *Morgan* and *Rosin,* ought to continue to be followed today without consideration of the wording changes made to the CHRA by the amendments in 1998 or that the statutory caps should continue to be applied to general and special damages ordered pursuant to sections 53(2)(e) and 53(3) of the CHRA without this issue being addressed. This requires ascertaining Parliament's likely intent from its decision to include an express, separate provision for an award of interest in the CHRA, from the text of section 53(4), the wording of the other amendments to section 53 and the overall legislative scheme and objectives of the CHRA.

D. Post-1998 Amendment Divergence

[103] The possibility that Parliament intended to change the law was not expressly considered in Tribunal cases following the amendment of the CHRA in 1998. Several subsequent decisions of the Tribunal held that interest was subject to the statutory cap in sections 53(2)(e) and 53(3) of the CHRA. However, they did so without analysis of the effect of the amendments. They did not engage in statutory analysis and address the factors identified as the modern approach to statutory interpretation in *Rizzo*. I agree with the Commission's submission that Tribunal cases that applied the older case law that post-dates the amendment of the CHRA in 1998 failed to properly consider the effect of the legislative

amendment to the CHRA by the addition of section 53(4). Those post-amendment Tribunal decisions that did award interest pursuant to section 53(4) of the CHRA without making interest subject to the statutory cap did so without mention of the statutory cap. Interest was awarded in these cases, as well, without analysis of the principles of statutory interpretation to explain the effect of the amendments and the conclusion (reached implicitly) in these cases that interest is not subject to the statutory cap. These cases also did not distinguish the Tribunal's case law that did apply the statutory cap to interest. It is difficult to understand this diverging practice as neither line of cases is supported by meaningful analysis that considers the effect of the 1998 amendments.

[104] Some of the cases decided after the amendments in 1998 were based on complaints that arose before the amendment. *Gagnon, Warman, Kyburz* and *Mowat CHRT* are examples. For instance, *Gagnon* and *Mowat CHRT* were released in 2002 and 2005, respectively. These cases concerned complaints that arose prior to 1998 and were decided based on the statutory language in the pre-June 1998 version of the CHRA that did not expressly address interest.

[105] Perhaps the pre-1998 decisions that were issued years later caused confusion or obscured matters. For whatever reason, some Tribunal decisions since the amendments were made have continued to follow the practice of including interest in the award of general or special damages by ordering that the interest awarded be subject to the statutory cap of $20,000; *Hughes* (decided in 2018), *Kelsh* (decided 2019), *Christoforou* (decided in 2021) and *Philps* and *Luckman* (both decided in 2022) are five recent examples. Such cases often contain the statement that "the accrual of interest on the award made should not result in a total award that surpasses the statutory maximums prescribed in the Act." Some cite the earlier decisions such as *Hebert FC* in their reasons (which relied upon *Morgan* and *Rosin*) or rely upon them by way of a quotation.

[106] The Commission correctly points out that, in many other recent decisions, the Tribunal has ordered interest as a separate award pursuant to section 53(4) of the CHRA. Examples of this approach include *Cassidy* (decided 2012), *Alizadeh-Ebadi* (decided in 2017), *Aeropro* and *O'Bomsawin* (both decided in 2019), *First Nations* (decided by the

CHRT in 2019 and the Federal Court in 2021), *Andre* (decided in 2021) and *Abadi* (decided 2023). No doubt this continuing discordance would also lead to confusion.

E. Has the divergence in post-amendment case law been resolved?

[107] The parties submit that case law exists that does resolve this divergence in Tribunal opinion. However, they disagree about the outcome.

[108] With respect, I do not agree with the Commission's submission that the Federal Court's decision in *First Nations* confirms that interest is not subject to the statutory cap. The Tribunal's decision to award interest was not in issue in that case. There is no reason to infer that the Federal Court considered the issue in this ruling in its decision. If it had, it would have stated so.

[109] I turn to UPS's submission that the Tribunal has already considered this issue in *Philps* and *Luckman* and decided that the statutory caps in the CHRA are inclusive of interest. With respect, these cases only cite or quote and apply the older case law. They contain no analysis of this issue in light of the statutory amendments in 1998.

[110] I considered whether the Federal Court or the Supreme Court of Canada has made any decisions about interest awards by the Tribunal for complaints filed after the CHRA was amended in 1998. It does not appear that the issue in this ruling has been addressed in the context of the CHRA by a higher court. The divergence in the post-amendment case law respecting the application of the statutory cap to interest has not been resolved.

F. The Supreme Court of Canada's Decision in *Mowat SCC*

[111] The Supreme Court of Canada's decision in *Mowat SCC* in 2011 at para 9 does, however, contain an observation about the fact of the Tribunal's application of the statutory cap to interest (found at para 7 in *Mowat CHRT*, the Tribunal decision which concerned the merits). As noted, *Mowat CHRT* is one of the pre-amendment cases that was decided after the 1998 amendments to the CHRA, but which relates to acts of discrimination that occurred prior to the amendments. The observation by the Supreme Court of Canada therefore, in

effect, pre-dates the 1998 amendments and does not resolve the divergence in the post-amendment case law. Further, the comment at para 9 is part of the Court's summary of the prior proceedings in the case to provide context for its analysis on the costs issue before it. It is, therefore, not part of the Court's direct analysis and is, therefore, not strictly speaking *obiter*. As well, Ms. Peters, the Commission and UPS did not suggest that *Mowat SCC* did comment favourably upon the application of the statutory cap to interest or otherwise raise this as a matter for my consideration. This Tribunal is not obligated to treat contextual or non-binding comments of a court, albeit a court with higher jurisdiction, as if the comment is a decision, which would be binding upon the Tribunal. However, the observation was made by the Supreme Court of Canada. While I have concluded that it is not a binding decision and is not, strictly speaking, *obiter*, I concluded that I should note the Court's observation about the application of the statutory cap to an award of general damages and interest in *Mowat CHRT*, consider whether the Court's observation is not binding but is in some way persuasive, and carefully consider the reasoning in that decision.

[112] In *Mowat SCC,* the Supreme Court of Canada heard an appeal from a different decision than *Mowat CHRT*. The Court heard an appeal of a decision of the Federal Court of Appeal about a decision from the Federal Court that judicially reviewed the Tribunal's ruling in *Mowat v. Canadian Armed Forces*, 2006 CHRT 49 [*CHRT Mowat Expenses Ruling*]. The *CHRT Mowat Expenses Ruling* was the ruling of the Tribunal where it concluded that it could award hearing and legal costs as expenses. It is this ruling which was disallowed by the Supreme Court of Canada in *Mowat SCC* in 2011. As explained above, the Supreme Court of Canada disagreed with the Tribunal's decision to award legal costs. The Court found that legal costs are not recoverable expenses under former section 53(3)(c) of the CHRA because, while the Tribunal was granted the express authority to award expenses in that subsection, the Tribunal was not granted express authority to award legal costs. The Court's comment about an award of interest, which I address here, was about the Tribunal's earlier decision in 2005 in *Mowat CHRT* which concerned the merits of the complaint and other issues respecting remedy besides the ruling about legal costs that was subsequently addressed by the Tribunal in the *CHRT Mowat Expenses Ruling*.

[113] As noted, the Supreme Court's observation about *Mowat CHRT* is at para 9. Justices LeBel and Cromwell, who wrote the unanimous decision in *Mowat SCC* for the Court, stated this about the merits decision in *Mowat CHRT*: "The Tribunal awarded $4,000 (plus interest, taking the award to the maximum of $5,000, the statutory limit at the time), to compensate the appellant for 'suffering in respect of feelings or self-respect' (para. 7)". [Emphasis added.] This is the extent of the Court's contextual comment.

[114] I return to the point that this is a statement in the paragraphs of the Court's reasons that describe the history of the proceedings; the statement concerns the outcome respecting the award of damages and interest in an earlier decision in the Tribunal's proceeding. Effectively, the Tribunal capped the amount of interest the complainant could receive at $1,000. The Supreme Court of Canada was not tasked with making a finding about this or on the point of law in issue here. Nonetheless, I considered whether this comment could perhaps in some way appear to implicitly accept the reasons for the idea that interest is subject to the statutory cap. However, it is not the case that the Supreme Court can be assumed to have considered and approved of the Tribunal's reasons in *Mowat CHRT* for awarding interest along with general damages, making interest subject to the statutory cap. The Tribunal in *Mowat CHRT* did so without analysis or providing reasons.

[115] For these reasons, the comment in *Mowat SCC*, noting that the statutory cap was applied to interest in *Mowat CHRT*, is not binding, and, if it were *obiter* or was required to be considered, as an observation alone it is not persuasive. Further, any arguable acceptance of the Tribunal's treatment of interest by the Court is not relevant to the post-1998 statutory landscape as language has been added to the CHRA to permit interest awards in a separate provision. The issue in this ruling is required to be decided based on the amended statutory language.

[116] The observation about the application of the statutory cap does, however, arguably align with the point made earlier in these reasons that, today, the Supreme Court of Canada most likely would not agree with the pre-1998 statutory interpretation that interest could be awarded along with general damages pursuant to the CHRA, there being no text in former section 53(3) expressly providing that authority.

[117] At para 39, the Supreme Court of Canada further observed that the complainant received an award for pain and suffering under former section 53(3) and noted that the Tribunal in the merits decision (*Mowat CHRT*) disallowed her medical expense claims because the provision of the CHRA in question did not include the word “expenses”.

[118] With respect to awarding legal costs as expenses, at para 41, the Court stated:

> Finally, in relation to the text of the Act, it is noteworthy that it very strictly limits the amount of money the Tribunal may award for pain and suffering experienced as a result of the discriminatory practice and, as noted, does not explicitly provide for reimbursement of expenses in relation to such an award. At the time of these proceedings, the limit was $5,000. The Tribunal’s interpretation [of expenses in *CHRT Mowat Expenses Ruling*] permits it to make a freestanding award for pain and suffering coupled with an award of legal costs in a potentially unlimited amount. This view is hard to reconcile with either the monetary limit or the omission of any express authority to award expenses in s. 53(3).
>
> [Emphasis added.]

[119] The Supreme Court of Canada was not prepared to include legal expenses as part of compensation in former section 53(3) in part because an award of legal expenses is theoretically unlimited and there is a limit on the amount of damages that could be awarded pursuant to former section 53(3). As well, there was an absence of express wording in former section 53(3) authorizing that type of expense. Likewise, interest is typically awarded by the courts in a potentially unlimited amount and was not expressly referenced in former section 53(3). If anything, the Court’s comment at para 41 makes it difficult to reconcile former section 53(3) and those pre-amendment decisions that included interest with general damages in section 53(3) where it was subject to a monetary limit or to reconcile those cases with the lack of express authority to award interest.

[120] It is at least questionable whether the Supreme Court of Canada would have been prepared to read “interest” into the word “compensation” as used in section 53(3) given the different purposes and nature of these awards, as explained above, or would have reconciled the implications of including interest in a provision imposing a strict monetary limit upon general damages.

[121] In any event, my analysis is guided not by the Court's observation about the application of the statutory cap to interest prior to the 1998 amendments to the CHRA, but rather by the Supreme Court of Canada's approach to statutory interpretation which is determinative and binding upon this Tribunal.

G. Is it reasonable to apply the statutory cap to interest post-amendment?

[122] Whether the Tribunal's jurisdiction (and its discretion) to award interest is fettered by the statutory cap can be a significant issue for successful complainants, particularly those that have waited a long time for justice. From the moment the decision in *Mowat CHRT* was issued in 2005, the amount of interest was capped at $1,000. Not only was the complainant possibly denied the full amount of pre-judgment interest she was entitled to receive during the 1998-2005 period, but the Tribunal's decision also possibly had the effect of denying her receipt of post-judgment interest because of the statutory cap.

[123] As noted, the Tribunal's Rules contemplate that interest awards continue to accrue until the complainant receives the compensation they have been awarded. So too do interest awards granted by the courts based on the case law. This is in the interests of fairness to successful complainants who have not yet received the compensation to which they are entitled at law.

[124] If interest is subject to the statutory cap post-amendment of the CHRA, respondents could be encouraged to not pay the compensation they owe the complainant in a timely fashion. To illustrate, the statutory cap on interest ordered by the Tribunal in *Mowat CHRT* provided an opportunity for the respondent to continue to earn interest on the total compensation or to realize other benefits from retaining those funds instead of the complainant (I do not mean to suggest that this occurred, only to illustrate the risk).

[125] However, regardless of policy concerns, I am required to decide whether it is a reasonable interpretation of the CHRA to apply the statutory cap to interest post-amendment based on the statutory language in the CHRA. What is persuasive is the submission that the decision to award interest as part of compensation under former section 53(3) was not well aligned with the purpose of the CHRA and the "compensatory approach" required under this

statute, as determined in other decisions of the Supreme Court of Canada and the Federal Courts. This compensatory approach continues to be applied today. With the exception of wilful or reckless damages, the CHRA intends to confer awards that put the complainant back in the position they would have been in had the discrimination not occurred. Interest is necessary to truly accomplish this statutory goal. Arguably the Tribunal should have been expressly authorized to order interest from the outset when the CHRA was enacted.

[126] If interest continues to be subject to the statutory cap post-amendment of the CHRA, any pre-judgment interest on an award could reduce the amount of room left under the statutory cap for general and special damages that could be awarded and/or post-judgment interest, or, conversely, any damages awarded could reduce the amount of interest received compared to what would otherwise likely be ordered. In cases where the award of damages is significant and the statutory cap is engaged, this practice has the net effect of “robbing Peter to pay Paul”.

[127] Prior to the amendment of the CHRA, a complainant who was awarded $5,000 in general damages would not have been entitled to interest on their general damages at all by reason of the application of the statutory cap. *Canada (Attorney General) v. Green (TD)*, 2000 CanLII 17146 (FC) at para 182 is an example of this occurring. The Federal Court found that, because the Tribunal awarded compensation up to the cap of $5000, no interest could be awarded. If the older case law continues to apply, a complainant awarded $20,000 under the increased statutory cap would not be entitled to interest on their general damages at all by reason of the application of the statutory cap.

[128] Damages and interest are often awarded by the Tribunal in less significant amounts such that, even though all potentially available interest is awarded, the total amount of the award is below the statutory cap. However, the statutory cap is expected to be uniformly applied across all cases, if it applies, including those where significant damages are awarded. If a complainant is awarded interest on general damages and the amount of general damages and interest exceeds the cap, that will mean that the complainant is only receiving a partial award of interest or damages that have been awarded.

[129] Cases where the maximum amount of general or special damages are awarded are reserved for the most reprehensible discriminatory conduct before the Tribunal. Damages are awarded on an individual basis and will vary from case to case. But that is based on the Tribunal having heard the evidence and having exercised its discretion to determine what is fair and reasonable. It works an injustice to a successful complainant to deny them access to interest based on an inflexible rule that does not adjust to fit the individual's circumstances. I can think of no justification to award interest on an arbitrary and inconsistent basis as between complainants based on the amount of damages they are awarded except for mathematical reasons. Damages and interest address different harms or losses.

[130] It is not fair or reasonable to award the full amount of potentially available interest to successful complainants who have endured discrimination of a relatively minor or less impactful nature and to deny the full amount of potentially available interest to those who have endured the most reprehensible discrimination. Inequality in treatment under the law is the antithesis of the purpose of the CHRA. It is, therefore, important to not simply apply these older cases and, instead, to first determine whether there is a statutory limitation upon the award of interest in the CHRA. The most vulnerable victims of discrimination who appear before the Tribunal should not be adversely impacted in such an indefensible manner unless the Tribunal's hands are tied by its enabling legislation.

[131] Given the purpose of the CHRA is to make the complainant whole, subject to the exception of damages for wilful or reckless conduct, partial recovery of interest is not a reasonable interpretation of the CHRA, absent express authority in the CHRA.

H. Statutory Analysis of the Amendments

[132] In 1998, Parliament made clear its intent that a complainant is entitled to interest by amending the CHRA to add the express authority of the Tribunal to award interest in section 53(4). That much is clear. There is plain language in section 53(4) stating that the Tribunal may award interest.

[133] That the application of the statutory cap to interest awards on general damages was not reasonable given the purpose of the CHRA and the legislation's compensatory approach

most likely provided the reason for Parliament to decide to amend the CHRA in 1998 to create a separate provision in the CHRA to expressly provide the Tribunal with the jurisdiction to award interest. In my view, it is significant that Parliament chose to place interest in its own separate subsection within section 53 of the CHRA. Parliament, in effect, withdrew interest from the statutory language authorizing an award of general damages. Parliament appears most likely to have included interest in a separate section from those containing the statutory caps in section 53 to avoid the application of the statutory cap upon interest. Further, the timing of the amendments in 1998 following the development of the pre-1998 judicial interpretation of former section 53(3) whereby the statutory cap was applied to interest is consistent with this intention, as are the contents of the amendments themselves.

[134] There is no wording in section 53(4) itself that suggests that the statutory cap still applies to interest. There is no wording in section 53(4) of the CHRA to link that section back to the cap on damages in sections 53(2)(e) and 53(3), such as making section 53(4) “subject to” those provisions as applicable.

[135] Arguably, the application of the statutory cap on damages negates Parliament’s intent to expressly authorize a discretionary award of interest by adding section 53(4) to the CHRA. A finding that the statutory cap applies to interest leads to the potential denial of interest on general and special damages when Parliament clearly intended to give the Tribunal the unequivocal authority to award interest by enacting section 53(4). I conclude that express language requiring that a statutory cap be applied or some other compelling rule relevant to statutory interpretation, such as by necessary implication, must exist to interpret the plain language in section 53(4) stating that the Tribunal may award interest differently than what it says. There is no express language stating that interest is subject to the statutory cap.

[136] The Tribunal is required to interpret the text of section 53(4) of the CHRA and apply the section in light of sections 53(2)(e) and 53(3), other related sections of the CHRA and the context provided by the CHRA as a whole. But in doing so, the Tribunal should not overlook the plain meaning of the words in the subject provision.

[137] A key issue that remains is whether Parliament, in amending the CHRA in the manner in which it did, included other language while amending section 53 that demonstrates that it intended that the statutory cap would continue to apply to interest.

[138] Parliament located the new, express authority of the Tribunal to award interest pursuant to section 53(4) of the CHRA within section 53, as opposed to elsewhere in the CHRA, along with the current version of section 53(2)(e), which expressly authorizes an award of general damages for pain and suffering, a new statutory cap on general damages in section 53(2)(e) of $20,000, and special damages for wilful or reckless conduct by a respondent in new section 53(3) of the CHRA, subject to a revised statutory cap of $20,000. One issue is whether any of this context overrides or changes the plain meaning of the text in section 53(4).

[139] The word “interest” is not included in section 53(2)(e) of the CHRA concerning general damages; it is referenced in section 53(4). Following the same logic in *Mowat SCC* concerning the statutory authority of the Tribunal to award expenses, I do not expect that interest can be ordered in relation to section 53(2)(e) of the CHRA any longer as if it is part of general damages for pain and suffering in that subsection. Interest is a separate award in section 53(4). There is no need to “read in” interest to section 53(2)(e) to find jurisdiction to award interest.

[140] Former section 53(3) used to state that the Tribunal may order the person to pay “such compensation” to the victim, not exceeding $5,000, “as the Tribunal may determine”. As explained, the word compensation is no longer used. Instead, section 53(2)(e) allows the Tribunal to order that the person who engaged in the discriminatory practice <u>compensate</u> the victim for any pain and suffering the victim experienced as a result of the discriminatory practice. Section 53(2)(e), where the statutory cap upon general damages resides, is clearly about damages for pain and suffering. It no longer includes damages for other matters “as the Tribunal may determine” as those words were also removed during the amendments.

[141] Section 53(3), which allows the Tribunal to award special damages, does retain the word “compensation.” However, there still is no longer a need to read interest into the word compensation because interest is provided for in its own separate section in section 53(4)

of the CHRA. As suggested above, the addition of section 53(4) by Parliament is consistent with the premise that “interest” likely was not intended to be read into “compensation” in the context of that provision to begin with. Further, because of the amendments to section 53, it is now clear that section 53(3) pertains to special damages only.

[142] I do not agree, with respect, with UPS’s submission that the words “in addition to” need to appear in section 53(4) for interest to be a separate remedy, detached from the statutory caps in sections 53(2)(e) and 53(3) of the CHRA. Parliament does not use words unnecessarily and these words are unnecessary. It is already apparent from the context of the entirety of sections 53(2)-(4) that interest awarded pursuant to section 53(4) is a separate term in an order. Section 53(2) authorizes the Tribunal to make an order “and include in the order any of the following terms that the member or panel considers appropriate.”

[143] Further, interest is not exclusive to general and special damages in sections 53(2)(e) and 53(3). Section 53 encompasses a broader field of compensatory remedies than general and special damages. Interest applies to “an order to pay compensation under this section [i.e. section 53]”. Interest may be ordered on any award of compensation authorized by section 53 such as compensation for lost wages and related expenses. In other words, interest may be ordered on permitted awards of compensation that are not subject to a statutory cap. In the post-amendment language of the CHRA, the statutory cap clearly only applies to general and special damages, not interest.

[144] UPS submits that the use of the word “include” in this context means that interest may be included in the pain and suffering award whereby it would be subject to the statutory cap. This submission is not persuasive because section 53(4) of the CHRA permits interest to be awarded on any monetary award. UPS’s suggested interpretation would create redundancy within the context of section 53, which is not persuasive.

[145] UPS argues that “may include” and “in addition to” in section 53 suggest opposite effects. With respect, I do not agree that these wording choices indicate a different intention by Parliament in different subsections within section 53 of the CHRA. Based on a reading of section 53 in its entirety, both “wording choices” are used to convey that these impacted

awards are discretionary. In this context, these terms, while different, are not opposites. Their use ensures that section 53, read as a whole, is cohesive.

[146] There is nothing in section 53 to indicate that general and special damages are to be treated any differently when it comes to an award of interest than the other potential opportunities to award interest upon monetary awards in section 53. That all interest awards should be treated the same is confirmed by section 53(4) of the CHRA which states that an order to pay compensation under section 53 may include an award of interest. Essentially, interest is awarded on top of other damages awarded in an order. Section 53(4) of the CHRA allows interest to be awarded on any award of "compensation" that is ordered by the Tribunal pursuant to section 53. If general and special damages were still intended to be treated differently than other types of compensation by reason of being subject to the statutory caps, section 53 would need to be written differently.

[147] How the term "order" appears in section 53(2)(e) supports this proposition for general damages, as the provision provides that "the member … may … make an order against the person … and include in the order any of the following terms: … (e) [general damages]".

[148] Special damages are less clear in this respect because section 53(3) of the CHRA states that, "In addition to any order under subsection (2)", the Tribunal may order the person to pay special damages. It is not as clear as it is in section 53(2) that including interest in the order means it may apply to all monetary awards in the order as opposed to in section 53(3) where interest would only apply to a specific remedial provision to which the statutory cap applies. However, I am not persuaded that Parliament intended that only the interest awarded in relation to special damages would be subject to the statutory cap when interest on general damages is not. That interpretation is not reasonable in light of the overall statutory scheme and purpose of the CHRA.

[149] Following the rationale adopted by the Supreme Court of Canada in *Mowat SCC*, I find that the statutory cap applies to those specific awards or potential terms of an order in which the words "by an amount not exceeding twenty thousand dollars" appears (the "statutory cap" in these reasons). Further, there is nothing in section 53(4) of the CHRA or

in the surrounding context of section 53 to indicate that the application of section 53(4) varies among the provisions that provide compensation to complainants in section 53.

[150] Lastly, section 53(4) states that an order to pay compensation may include an award of interest at a rate and for a period that the member or panel considers appropriate. This is expressly subject to the proviso in section 53(4) of the CHRA that jurisdiction to award interest is subject to the Tribunal's Rules made under section 48.9. The Tribunal has made Rules for this purpose.

[151] The issue is not the content of the Rules. The point is that Parliament turned its mind to whether a proviso should attach to the Tribunal's authority to award interest and specified what that proviso should be. If Parliament concluded that interest on general and special damages should be subject to the statutory cap, it could have included a proviso to that effect in section 53(4) of the CHRA. Instead, it chose to bestow significant discretion respecting interest on the Tribunal through its Rules.

[152] Further, if the statutory cap were to apply to interest awards, that could run afoul of the wording in section 53(4) which allows the Tribunal to create rules respecting the "period that the member or panel considers appropriate" for interest to run. At some point, depending on the facts, a statutory cap on interest negates the accumulation of interest. It does not make sense for Parliament to authorize the Tribunal to create rules about how long interest should accumulate if a statutory cap on interest is intended to still apply. Parliament would not bestow upon the Tribunal the ability to create subordinate regulations that contradict the statute without expressing that intent. Parliament is presumed to legislate based on internal statutory consistency unless there is express language that indicates otherwise.

[153] Accordingly, cases where the Tribunal selects a start date and an end date for the accrual of interest in accordance with the Rules and then makes that interest award subject to the statutory cap appear to be in error. Section 53(4) contains no express language authorizing this approach. While interest is a discretionary award, applying the statutory cap contradicts the authority given to the Tribunal in section 53(4) to create Rules respecting the start and end date for the accrual of interest.

[154] In my view, the rule-making authority expressly given to the Tribunal in section 53(4) of the CHRA is consistent with the intention of Parliament that interest in section 53(4) is a separate, stand-alone but discretionary remedy. While the Tribunal awards interest in its discretion, is authorized to make its own rules in this regard, and has discretion under the Rules, there is no necessity nor is there a statutory basis any longer for the Tribunal's discretion to be exercised to extend the application of the statutory cap to interest.

VI. Conclusion

[155] An order of interest may be applied to an award of general damages made pursuant to section 53(2)(e) or to an award of special damages ordered pursuant to section 53(3) of the CHRA. Interest may be ordered by the Tribunal upon all other compensatory awards in section 53, such as for loss of income or reimbursement of expenses. All such interest awards are authorized by section 53(4) of the CHRA.

[156] Interest is not subject to the statutory caps in sections 53(2)(e) and 53(3) of the CHRA that do apply to the award of either general or special damages. Interest is a separate, discretionary award from any damages awarded to Ms. Peters; the amount of interest is not to be deemed part of general damages or special damages that are subject to a statutory cap.

[157] Any award of interest to Ms. Peters is to be calculated in accordance with Rule 46, subject to the selection of a start date and point of cessation.

VII. Order

[158] The Tribunal issues the following declaratory order:

It is hereby declared that interest may be awarded pursuant to section 53(4) of the CHRA as a separate award pursuant to that section; for greater clarity, the statutory cap in sections 53(2)(e) and 53(3) of the CHRA does not apply to interest awarded pursuant to section 53(4) in relation to any of the potentially available awards of compensation in section 53 of the CHRA.

Signed by

Kathryn A. Raymond, K.C.
Tribunal Member

Ottawa, Ontario
January 3, 2025

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: January 3, 2025

Motion dealt with in writing without appearance of parties

Written representations by:

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

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

Nafisah Chowdhury, and Seann D. McAleese, for the Respondent, United Parcel Service Canada Ltd.

Linden Gordon, for the individual Respondent