Canadian Human Rights Tribunal

Tribunal canadien des droits de la personne

Citation: 2025 CHRT 7
Date: January 31, 2025
File No.: T2201/2317

Between:

Tesha Peters

Complainant

- and -

Canadian Human Rights Commission

Commission

- and -

United Parcel Service Canada Ltd. and Linden Gordon

Respondents

Ruling on Separate Damages Against the Respondent Employer

Member: Kathryn A. Raymond, K.C.

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I. OVERVIEW OF THE ISSUE

[1] Linden Gordon was found to have sexually harassed the Complainant, Tesha Peters, in *Peters v. United Parcel Service Canada Ltd. and Gordon*, 2022 CHRT 25 (CanLII) (the "Liability Decision"). In the Liability Decision, United Parcel Service of Canada Ltd. (UPS), Mr. Gordon's employer, relied on the statutory defence in section 65(2) of the *Canadian Human Rights Act* R.S.C., 1985, c. H-6 (CHRA) to avoid liability for Mr. Gordon's actions. However, UPS did not establish that it met the criteria in section 65(2), and the Tribunal held it liable for Mr. Gordon's conduct pursuant to section 65(1) of the CHRA.

[2] Ms. Peters asks that the Tribunal find Mr. Gordon and UPS, the Respondents, jointly and severally liable for Mr. Gordon's harassing conduct and award various damages to her for Mr. Gordon's sexual harassment on that basis. When requesting that the Tribunal award damages "jointly and severally", Ms. Peters asks that the Tribunal order that UPS and Mr. Gordon share responsibility for payment of any damage awards for Mr. Gordon's conduct, and, at the same time, that they each be held separately responsible for payment of any damages the Tribunal awards.

[3] Ms. Peters' request for damages includes both general and special damages for Mr. Gordon's sexually harassing conduct to be paid jointly and severally by UPS and Mr. Gordon. The Tribunal will address the issue of whether damages should be awarded for Mr. Gordon's sexual harassment and, if so, the quantum of any such damages and whether damages should be awarded against both Respondents jointly and severally in a separate decision.

[4] This ruling concerns Ms. Peters' request for a separate award of $20,000 in general damages for sexual harassment pursuant to section 65(2) of the CHRA against UPS. She contends that this award is warranted due to UPS's failure to not consent to Mr. Gordon's acts of harassment and its failure to prevent and mitigate the sexual harassment that she experienced in the workplace by reason of Mr. Gordon's conduct. Ms. Peters further submits that the Tribunal should award $20,000 in special damages against UPS for its wilful and reckless conduct in exacerbating Mr. Gordon's actions and for its failure to investigate her complaint until September 2015. Ms. Peters likewise asks that the Tribunal find UPS and

Mr. Gordon jointly and severally liable for the separate awards against UPS for its role in the sexual harassment.

[5] The Canadian Human Rights Commission (the "Commission") submits that section 53 of the CHRA permits the Tribunal to make an award of up to $20,000 against each Respondent for any pain and suffering experienced as a result of a discriminatory practice. The Commission also takes the position that the CHRA permits the award of another $20,000 in special damages against each Respondent for wilful or reckless conduct for a discriminatory practice. The positions of all parties are explained below.

[6] This ruling addresses how the Tribunal is to interpret and apply section 65 of the CHRA for the purpose of the remedial scheme within the CHRA. Specifically, it examines whether the Tribunal has the authority pursuant to the CHRA to make a second award of both general and special damages for sexual harassment against UPS, as Mr. Gordon's employer, based on the arguments that were presented for such an order.

II. DECISION

[7] Section 65(2) of the CHRA does not provide statutory authority to the Tribunal to order separate damages against UPS, as Ms. Peters submits. Section 65(2) is not a "discriminatory practice" within the legislative scheme of the CHRA. Section 65(2) is a statutory defence, available only to respondent employers and respondent service providers who can establish that they should be exculpated from liability for the acts and omissions of their employees, officers, directors and agents who discriminate.

[8] Likewise, section 65(1) of the CHRA is not a discriminatory practice. Section 65(1) of the CHRA creates liability for a respondent employer; it does not grant express authority to award damages for Mr. Gordon's sexual harassment of Ms. Peters, nor does it authorize a second award of damages against UPS for sexual harassment or for other remedies on its own. This section must be read together with sections 53(2) and 53(3) of the CHRA, which do authorize the Tribunal to issue damage awards. Section 65(1) and sections 53(2)(e) and 53(3) are to be given a contextual interpretation consistent with the provisions in the CHRA,

including those that create and define discriminatory practices, such as section 14, which makes sexual harassment a discriminatory practice.

[9] Sections 53(2)(e) and 53(3) provide the Tribunal with the authority to make a remedial order, which may include awarding general and special damages for the discriminatory practice of sexual harassment pursuant to section 14 of the CHRA. These sections require the Tribunal to find that the person who is alleged to have engaged in the discriminatory practice of sexual harassment has done so for it to grant an award of damages. In this complaint, Mr. Gordon is "the person" who has been found to have engaged in "the discriminatory practice" of sexual harassment pursuant to section 14 of the CHRA. In theory, the Tribunal may issue an order against Mr. Gordon, which includes terms for payment of damages pursuant to sections 53(2)(e) and 53(3) of the CHRA.

[10] Section 65(1) of the CHRA deems UPS to have committed the same acts as Mr. Gordon. Section 65(1) operates to legally deem UPS to have engaged in the same acts as "the person" (i.e., Mr. Gordon) who has been found to have engaged in "the discriminatory practice" of sexual harassment pursuant to section 14 of the CHRA. The effect of section 65(1) is that an order awarding damages, which the Tribunal may, in theory, issue against Mr. Gordon as an individual Respondent, may be the responsibility of and be issued against UPS. How section 65(1) should be interpreted and applied as between UPS and Mr. Gordon for Mr. Gordon's conduct will be explained in a separate ruling.

[11] Section 65(1) and sections 53(2) and 53(3) of the CHRA do not provide the Tribunal with the statutory authority to make two separate awards of general or special damages to Ms. Peters for Mr. Gordon's conduct—one against Mr. Gordon for which UPS is deemed legally responsible and a second against UPS. The fact that UPS is deemed to have engaged in the same conduct as Mr. Gordon pursuant to section 65(1) of the CHRA does not mean that Ms. Peters was sexually harassed twice. Two awards of damages for the same harm or injury would, generally speaking, constitute a double recovery of damages. Double recovery of damages unjustly enriches a complainant and is not legally permissible.

[12] Naming the harassing employee as a respondent in a proceeding before the Tribunal concerning a sexual harassment complaint pursuant to section 14 of the CHRA, in addition

to naming the respondent employer, does not increase the number of discriminatory practices that can be found to have occurred in the course of the harasser's employment because of that employee's actions. As explained, section 65(1) of the CHRA deems the acts constituting the discriminatory practice by the harasser to be the acts of the employer. This provision cannot reasonably be interpreted as increasing the number of discriminatory practices that occurred; rather, section 65(1) expands the scope of liability for what occurred to the employer. Accordingly, naming the harassing employee as a respondent does not increase the number of awards of damages that the Tribunal may make.

[13] The Tribunal cannot issue two separate awards of damages for sexual harassment, one against Mr. Gordon and another against UPS, on the basis that they are legally separate respondents. Section 65(1) of the CHRA deems the employer to have engaged in the acts of the harassing employee. By operation of section 65(1), the employer and harasser are not legally separate respondents once the Tribunal determines that section 65(1) applies. The Tribunal may issue separate awards of damages against legally separate respondents (see *Peters v. United Parcel Service Canada Ltd. and Gordon*, 2024 CHRT 140 (CanLII) (the "Statutory Cap Ruling")). However, because section 65(1) of the CHRA deems UPS to have committed the same acts as Mr. Gordon, UPS is deemed to have committed the discriminatory practice of Mr. Gordon. Mr. Gordon and UPS are not legally separate respondents for the purposes of awards of damages for sexual harassment pursuant to sections 53(2) and 53(3) of the CHRA against "the person found to be engaging or to have engaged in the discriminatory practice" by reason of the application of section 65(1) of the CHRA.

[14] To substantiate an allegation that UPS engaged in a separate discriminatory practice of sexual harassment, distinct from Mr. Gordon's conduct, the Tribunal must find that UPS itself engaged in unwelcome sexual conduct towards Ms. Peters. Ms. Peters relies on UPS's separate actions to request a separate award of damages against UPS for the discriminatory practice of sexual harassment. However, the conduct that Ms. Peters relies on is UPS's conduct in failing to prevent and address the sexual harassment, as found in the Liability Decision. UPS's conduct does not meet the legal test for sexual harassment pursuant to section 14 of the CHRA as it is defined in the case law.

[15] Further, the Tribunal is not authorized, based on the statutory language in the CHRA concerning the discriminatory practice of sexual harassment, to award damages for sexual harassment against UPS for its failure to not consent to the harassment or its failure to prevent or mitigate the effects of the harassment. In other jurisdictions, damages may be awarded against a respondent employer for the employer's failure to maintain a workplace free of sexual harassment as a result of the employer's failure to not consent to the harassment or its failure to prevent or mitigate the effect of the harassment. However, the CHRA does not contain statutory language to this effect. Instead, an employer's failure to maintain a workplace free of harassment and discrimination under the CHRA negates the employer's opportunity to be exculpated from liability for its employee's actions by the Tribunal pursuant to section 65(2) of the CHRA.

[16] Whether on its own or when read together with sections 14, 53(2) and 53(3) of the CHRA, section 65 does not authorize the Tribunal to essentially make two awards of general and special damages against UPS for the discriminatory practice of sexual harassment based on the arguments presented.

III. BACKGROUND

[17] The background of Ms. Peters' complaint against UPS and Mr. Gordon and the Tribunal's findings are detailed in the Liability Decision. Additionally, Ms. Peters brought a motion about how the Tribunal should interpret and apply the statutory cap of $20,000 on damage awards in sections 53(2)(e) and 53(3) of the CHRA which resulted in the Statutory Cap Ruling and in *Peters v. United Parcel Service Canada Ltd. and Gordon*, 2025 CHRT 2 (CanLII) (the "Statutory Cap on Interest Ruling"). In the course of the motion and final submissions for the hearing, the Tribunal was asked to decide how many discriminatory practices arise from the proven factual circumstances of Ms. Peters' complaint and how many awards of damages the Tribunal could, in theory, award to her against either of the Respondents. These reasons are intended to include and incorporate the reasons in the decisions referenced above, as they provide much of the foundation for this ruling.

[18] For purposes of deciding whether Ms. Peters' complaint was substantiated and whether her motion regarding the statutory cap needed to be decided, I determined in the Liability Decision that Mr. Gordon was liable for sexual harassment of Ms. Peters pursuant to section 14 of the CHRA. The Tribunal also found UPS liable for discriminating against Ms. Peters on the ground of disability pursuant to section 7 of the CHRA. This latter finding is based on the acts and omissions of other UPS employees who, unlike Mr. Gordon, are not named respondents in this complaint. Because of the need to decide how to interpret and apply the statutory cap, the Tribunal did not issue a final decision in the Liability Decision regarding how many distinct discriminatory practices were proven against each respondent for the purposes of awarding damages.

[19] As explained in the Liability Decision, UPS attempted to rely on the statutory defence in section 65(2) of the CHRA with respect to Mr. Gordon's sexual harassment of Ms. Peters. However, the Tribunal concluded that UPS could not be exculpated from liability for Mr. Gordon's harassment of Ms. Peters by virtue of section 65(2) of the CHRA. The Tribunal made factual findings in this regard, summarized as follows: UPS failed to not consent to the harassment, failed to have an effective policy about sexual harassment in the workplace, failed to adequately train its workforce about harassment, failed to conduct a timely investigation into Ms. Peters' complaint of sexual harassment and otherwise failed to take any steps to mitigate the effect of the discrimination on Ms. Peters. The Tribunal's findings about UPS's conduct are relevant here.

[20] In her motion about the interpretation and application of the statutory cap and in her final submissions, Ms. Peters asked the Tribunal to find that there were five discriminatory practices of sexual harassment based on the facts in this case and to find that both Respondents engaged in the five discriminatory practices for different reasons. Those "different reasons" are that Mr. Gordon engaged in the harassment while UPS failed to not consent and failed to prevent his harassment of Ms. Peters or to mitigate its effects.

[21] In the Statutory Cap Ruling, the Tribunal found that the Tribunal only has the authority to make one award of general damages and one award of special damages for the discriminatory practice of sexual harassment per legally separate respondent pursuant to sections 53(2)(e) and 53(3) of the CHRA. The Tribunal determined that Mr. Gordon engaged

in one discriminatory practice of sexual harassment pursuant to section 14 of the CHRA, not five as Ms. Peters submitted. The Tribunal confirmed that UPS engaged in a discriminatory practice based on disability pursuant to section 7 of the CHRA. However, it indicated that it would decide in a separate ruling whether UPS had also engaged in the discriminatory practice of sexual harassment, in addition to being responsible for Mr. Gordon's sexual harassment of Ms. Peters pursuant to section 65(1) of the CHRA. This is that ruling. This ruling also determines whether Mr. Gordon and UPS are legally separate respondents for purposes of awarding damages. As noted above, the Tribunal will decide how the Tribunal is to interpret and apply section 65(1) of the CHRA to both Respondents when making any order for damages in a separate ruling.

IV. ISSUES

[22] Employees have an implied right to freedom from harassment, including sexual harassment, in the workplace by virtue of the operative impact of the CHRA. That is not in dispute. The CHRA creates an obligation on employers to maintain a workplace free of sexual harassment. This was established by decisions such as *Janzen v. Platy Enterprises Ltd*., [1989] 1 SCR 1252 at 1284, 1989 Can LII 97 (SCC) [*Janzen*] at page 33, where the Supreme Court of Canada held that:

> Without seeking to provide an exhaustive definition of the term, I am of the view that sexual harassment in the workplace may be broadly defined as unwelcome conduct of a sexual nature that detrimentally affects the work environment or leads to adverse job-related consequences for the victims of the harassment. It is, as Adjudicator Shime observed in *Bell v. Ladas*, *supra*, and as has been widely accepted by other adjudicators and academic commentators, an abuse of power.

[23] In *Canada (Human Rights Commission) v. Canada (Armed Forces)*, 1999 CanLII 7907 (FC), [1999] 3 FC 653, 1999 CanLII 18902 (FC) [*Franke*], the Federal Court commented that "[i]n recent years, courts and tribunals have insisted on a degree of vigilance over the work environment, which requires employers to provide a workplace free from harassment" and pointed out that employers have an obligation to respond to reported harassment. That is also not in dispute. The issue is whether the CHRA provides the authority to the Tribunal to make a separate award of damages against the employer for a

breach of this implied right, in addition to being responsible for the award of damages for the harassment itself. The Tribunal is required to assure itself that it has jurisdiction and the authority to make any proposed order pursuant to the CHRA.

[24] Ms. Peters provided limited submissions in support of her request for separate and additional general and special damages from UPS for sexual harassment. The Commission argued that the Tribunal does have the authority to award separate damages against both Mr. Gordon and UPS for sexual harassment. UPS made no submissions on this point and appears to have assumed that the Tribunal has the authority to make two awards of each type of damages against it for sexual harassment.

[25] I will decide the following issues in this ruling:

i) Does the Tribunal have the authority pursuant to section 65 of the CHRA to order two separate awards of general damages pursuant to section 53(2)(e) to Ms. Peters for the discriminatory practice of sexual harassment? Specifically, can the Tribunal order the following:

   a. one award of general damages for Mr. Gordon's harassing conduct for which UPS is responsible; and

   b. a second, separate award of general damages against UPS based on its own conduct in failing to not consent to or failing to prevent and mitigate the effects of Mr. Gordon's harassment?

ii) Likewise, does the Tribunal have the authority pursuant to section 65(2) of the CHRA to order two awards of special damages pursuant to section 53(3) to Ms. Peters for the discriminatory practice of sexual harassment? Specifically, can the Tribunal order the following:

   a. one award, should the Tribunal find that Mr. Gordon engaged in wilful and reckless conduct, for which UPS would be responsible; and

   b. a second additional award of special damages against UPS, should the Tribunal find that UPS engaged in wilful and reckless conduct in relation to its failure to not consent, its lack of prevention or its failure to mitigate the sexual harassment of Ms. Peters by its employee, Mr. Gordon?

iii) What is the impact of this ruling on Ms. Peters' claim for personal remedies?

[26] The above issues have been organized based on the arguments that were presented by Ms. Peters and the Commission.

V. POSITIONS OF THE PARTIES

A. Position of Ms. Peters

[27] As noted, Ms. Peters' submissions in support of her request that the Tribunal award damages against both Respondents were limited. In her final submissions, Ms. Peters provided a finalized list of awards she asked the Tribunal to order following the completion of the evidentiary portion of the hearing. (Her request that the Tribunal award her general damages of $20,000 for each of the five discriminatory practices for Mr. Gordon's conduct may be disregarded as a result of the Statutory Cap Ruling. As explained, the Tribunal determined, in the Liability Decision, that one finding of the discriminatory practice of sexual harassment was made against Mr. Gordon, for which it found UPS liable pursuant to section 65(1) of the CHRA.) Ms. Peters' reasons for her request that UPS pay separate damages for sexual harassment in addition to those for Mr. Gordon's conduct are incorporated in the list of awards she seeks:

> Compensation from UPS of general damages consisting of $20,000.00 for each of five practices of UPS, as the employer, consenting to the sexual harassment of Ms. Peters by Mr. Gordon and for having failed to have taken reasonable steps to prevent and mitigate the effects of the sexual harassment pursuant to section 65(2) of the CHRA Act for a total award of general damages in relation to sexual harassment of $100,000.00;
>
> Compensation from UPS of special damages consisting of $20,000.00 for wilful and reckless conduct for UPS's role in exacerbating the conduct of Mr. Gordon and UPS's failure to conduct any investigation of Ms. Peters' complaints until September 2015 with respect each of the five practices of sexual harassment by Mr. Gordon for a total award of special damages for sexual harassment of $100,000.00. [Emphasis added.]

[28] Ms. Peters expressly states that she is seeking general damages from UPS pursuant to section 65(2) of the CHRA. The legal foundation for her request for special damages from UPS is less clear. Ms. Peters does not expressly reference section 65(2) or any other section of the CHRA in relation to her claim for separate special damages from UPS. As noted, Ms. Peters describes this claim as "compensation from UPS of special damages consisting of $20,000 for wilful and reckless conduct for UPS's role in exacerbating the conduct of Mr. Gordon and UPS's failure to conduct any investigation of Ms. Peters' complaints until

September 2015 with respect to each of the five practices of sexual harassment by Mr. Gordon…". Compensation for "exacerbating the conduct of Mr. Gordon" was not directly explained by Ms. Peters but appears to be related to or a corollary of UPS failing to "not consent" to the sexual harassment and "failing to mitigate the effects of the sexual harassment". Ms. Peters' testimony suggests that she felt unprotected by UPS as her employer and that UPS's failure to mitigate the effects of the discrimination exacerbated the effects of Mr. Gordon's conduct. The "failure to conduct any investigation of Ms. Peters' complaints until September 2015" is an example of UPS failing to mitigate the effects of the sexual harassment; without investigating her complaint of sexual harassment, UPS was not in a position to effectively decide how to mitigate the effects of the harassment. The term "mitigate" is the language used in section 65(2) of the CHRA. It appears, therefore, that Ms. Peters is requesting additional awards of both general and special damages against UPS in her list of requested remedies in her submissions on the basis of section 65(2) of the CHRA.

[29] Most of the conduct of UPS that Ms. Peters relies on was addressed in the Liability Decision. The Tribunal did not, however, expressly decide whether UPS's conduct exacerbated the conduct of Mr. Gordon in the Liability Decision. It is not yet necessary that the Tribunal determine this for the purposes of remedy. Ms. Peters appears to ask that the factual findings that the Tribunal made when it decided whether UPS could rely on section 65(2) lead to an additional award of damages against UPS for its own discriminatory practice, based on section 65 of the CHRA. I have reframed Ms. Peters' wording in relation to her claim for a second award of special damages against UPS to what she used for the purposes of general damages which more fully encapsulates her allegations and the Tribunal's findings.

[30] Ms. Peters also made a brief reference to *Willcott v. Freeway Transportation Inc*. 2019 CHRT 29 (CanLII) [*Willcott*] in her submissions. Ms. Peters highlights that the allegations in *Willcott* included that the employer failed to provide an environment free of sexual harassment.

B. Position of the Commission

[31] As explained, the Commission suggests that section 53 of the CHRA permits the Tribunal to make an award of up to $20,000 against each Respondent, for any pain and suffering experienced as a result of a discriminatory practice and another $20,000 in special damages against each Respondent for wilful and reckless conduct regarding a discriminatory practice. In this regard, the Commission relies on the Tribunal's decision in *N.A. v. 1416992 Ontario Ltd. and L.C.*, 2018 CHRT 33 (CanLII) [*N.A.*] at para 349 and para 353 where the Tribunal ordered damages against each of the individual and corporate respondents. The Commission argues that the Tribunal has the authority to order that UPS pay separate damages because of its lack of prevention and handling of the complaint based on the decision of the Human Rights Tribunal of Ontario (HRTO) in *Laskowska v. Marineland of Canada Inc*., 2005 HRTO 30 (CanLII) [*Laskowska*] and decisions of this Tribunal that follow its approach. The Commission submits that damages should be awarded against UPS because UPS failed to take steps to prevent and address the harassment (e.g., develop a suitable anti-harassment policy, provide adequate training, conduct an adequate investigation, and communicate its findings and actions to Ms. Peters and relevant managers, etc.).

[32] The Commission included a similar argument in its submissions for the motion that led to the Statutory Cap Ruling. The Commission alleged that there were at least three separate discriminatory practices for which compensation may be payable, which included "…the allegations about UPS's failure to provide a harassment-free workplace and to adequately address the sexual harassment contrary to sections 14 and 65(2) of the CHRA". The Commission, therefore, agrees with Ms. Peters that the Tribunal can award separate damages against UPS for sexual harassment based on sections 14 and 65(2) of the CHRA.

[33] The Commission further submits that UPS acted wilfully and recklessly in its prevention of and response to becoming aware of the allegation of sexual harassment. In its final written submissions, the Commission argued that:

> …UPS was under a heightened responsibility to promptly and appropriately address any alleged harassment involving these two employees. It failed….. It also failed to take adequate preventive measures by implementing an

> adequate anti-harassment policy and by having never provided training to Mr. Gordon on these issues at any point during the approximately 11 years that he was part-time supervisor. It also failed to provide anti-harassment training to most of its other employees. Therefore, UPS has displayed a significant degree of recklessness in this regard.

[34] The Commission otherwise limited its submissions to public interest remedies respecting these allegations.

C. Position of UPS

[35] UPS did not make submissions on the specific issues addressed in this ruling. UPS did not challenge the grounds that were described in Ms. Peters' list of requested damages, where she asks the Tribunal to find that UPS engaged in the discriminatory practice of sexual harassment, in addition to being liable for what Mr. Gordon did because of section 65(1) of the CHRA. UPS did not oppose Ms. Peters' and the Commission's proposition that the Tribunal had the statutory authority to make two awards of $20,000 in general damages or two awards of special damages for the discriminatory practice of sexual harassment because there are two Respondents.

D. Position of Mr. Gordon

[36] As noted in the Statutory Cap Ruling, Mr. Gordon did not take a position directly concerning Ms. Peters' motion and the damages she seeks against UPS. Mr. Gordon limited his submissions regarding remedy to the argument that he had little to no means to pay any damages awarded against him personally. Mr. Gordon pointed out that he had lost his job with UPS, remained unemployed and had ongoing health issues.

VI. ANALYSIS: GENERAL DAMAGES

Issue 1: Does the Tribunal have the authority pursuant to sections 53(2)(e) and 65 of the CHRA to order that UPS be responsible for two awards of general damages to Ms. Peters for sexual harassment, one award for the discriminatory practice concerning Mr. Gordon's conduct and a second award for UPS's failure to not consent to, to exercise all due diligence to prevent or to avoid, or to mitigate the effect of the harassment?

A. Statutory interpretation and application

(i) Approach to determining jurisdiction for remedies

[37] The Tribunal's approach to assessing its statutory authority for remedies was canvassed in the Statutory Cap Ruling under the heading "Key Decisions About the Tribunal's Jurisdiction" beginning at paragraph 56. The Tribunal also took a contextual approach to statutory interpretation to resolve the jurisdictional question regarding whether interest is subject to the statutory cap in the Statutory Cap on Interest Ruling. The Tribunal relies on the analysis of applicable statutory interpretation principles that were canvassed and applied in these previous rulings.

[38] In part, at paragraph 57 of the Statutory Cap Ruling, the Tribunal held that:

> The Tribunal must follow the plain language of the statute. It has no discretion to do otherwise. This means that the Tribunal cannot re-interpret the CHRA in a manner that would constitute an amendment of the legislation.
>
> I cannot order remedies that the CHRA does not expressly provide for or that cannot be derived from the legislation by necessary implication.

[39] As was emphasized in the Statutory Cap on Interest Ruling, in general, express language must be included in the CHRA for the Tribunal to have jurisdiction to award a remedy: *Canada (Canadian Human Rights Commission) v. Canada (Attorney General)*, 2011 SCC 53 (CanLII), [2011] 3 SCR 471 [*Mowat SCC*]. *Mowat SCC* concerned section 53(2)(c) of the CHRA which allows the Tribunal to order compensation to a victim of discrimination for any wages the victim was deprived of and for any expenses they incurred resulting from the discriminatory practice. (Section 53(2)(d) also authorizes the repayment of expenses, which is not relevant here). In *Mowat SCC*, the Supreme Court of Canada considered whether the words in section 53(2)(c), which authorized the Tribunal to award "…expenses incurred by the victim as a result of the discriminatory practice", authorized an award of legal costs. The Supreme Court of Canada interpreted the word "expenses" in the CHRA as not including legal costs that the complainant incurred to address their experience of discrimination. The Court decided that legal costs have a different and unique character

and, therefore, a different meaning than “expenses”. At paragraph 33, Justices LeBel and Cromwell wrote for the Court:

> The question is one of statutory interpretation and the object is to seek the intent of Parliament by reading the words of the provision in their entire context and according to their grammatical and ordinary sense, harmoniously with the scheme and object of the Act and the intention of Parliament (E. A. Driedger, *Construction of Statutes* (2nd ed. 1983), at p. 87, quoted in *Rizzo & Rizzo Shoes Ltd. (Re)*, 1998 CanLII 837 (SCC), [1998] 1 S.C.R. 27, at para. 21). In approaching this task in relation to human rights legislation, one must be mindful that it expresses fundamental values and pursues fundamental goals. It must therefore be interpreted liberally and purposively so that the rights enunciated are given their full recognition and effect: see, e.g., R. Sullivan, *Sullivan on the Construction of Statutes* (5th ed. 2008), at pp. 497-500. However, what is required is nonetheless an interpretation of the text of the statute which respects the words chosen by Parliament.

In *Mowat SCC*, the distinct nature of legal costs and the absence of an express reference to legal costs in the CHRA was dispositive of the issue.

[40] Consistent with *Mowat SCC*, the words chosen by Parliament in section 65 and elsewhere in the CHRA must be respected. The Tribunal cannot read wording into the CHRA that does not exist or arise by necessary implication.

(ii) Section 65(2) of the CHRA does not provide the Tribunal with the statutory authority to make a second award of damages pursuant to section 53(2)(e) for sexual harassment against UPS

(a) Interpretation of section 65(2)

[41] Section 65 states:

> **Acts of employees, etc.**
>
> **65 (1)** Subject to subsection (2), any act or omission committed by an officer, a director, an employee or an agent of any person, association or organization in the course of the employment of the officer, director, employee or agent shall, for the purposes of this Act, be deemed to be an act or omission committed by that person, association or organization.
>
> **Exculpation**

> **(2)** An act or omission shall not, by virtue of subsection (1), be deemed to be an act or omission committed by a person, association or organization if it is established that the person, association or organization did not consent to the commission of the act or omission and exercised all due diligence to prevent the act or omission from being committed and, subsequently, to mitigate or avoid the effect thereof. [Emphasis added.]

[42] Section 65(2) does not directly authorize access to remedies. The wording of section 65(2) of the CHRA does not provide the statutory authority to the Tribunal to order damages. The word "order" does not appear in section 65(2), nor does the word "damages". In the absence of wording authorizing an order of damages, section 65(2) of the CHRA, as a stand-alone provision, does not authorize the Tribunal to award damages against UPS.

[43] As explained above, the Tribunal's authority to make a remedial order of damages for sexual harassment lies in sections 53(2)(e) and 53(3) of the CHRA. These sections authorize the Tribunal to make an order that includes the award of damages where a complaint is substantiated. (In this portion of this ruling, I address section 53(2)(e) of the CHRA that authorizes general damages. Special damages pursuant to section 53(3) are addressed below.)

[44] Section 53(2)(e) provides the Tribunal with the statutory authority to award "general damages" for any pain and suffering a person experienced as a result of the discriminatory practice of sexual harassment. Section 53(2)(e) is intended to provide compensation subject to the statutory cap for the pain and suffering arising from a discriminatory experience: *Grant v. Manitoba Telecom Services Inc*., 2012 CHRT 10 (CanLII) at para 115.

[45] Section 53(2)(e) states:

> **Complaint substantiated**
>
> 53(2) If at the conclusion of the inquiry the member or panel finds that the complaint is substantiated, the member or panel may, subject to section 54, make an order against the person found to be engaging or to have engaged in the discriminatory practice and include in the order any of the following terms that the member or panel considers appropriate:
> ….
> (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. [Emphasis added.]

[46] The Tribunal has jurisdiction to issue orders pursuant to section 53(2) of the CHRA against the “person” found to have engaged in the “discriminatory practice”. The statutory direction that an order be issued against the person who engaged in the discriminatory practice is a key provision in the CHRA. The CHRA states throughout that it is a “person” who engages in discrimination and is subject to its provisions. This includes section 53(2), which uses this wording for purposes of a Tribunal order.

[47] The second criterion in section 53(2) of the CHRA is that “the person” is found to have engaged in “the discriminatory practice”. Ms. Peters suggests that UPS has engaged in a discriminatory practice pursuant to section 65(2) of the CHRA. In the Statutory Cap Ruling, the Tribunal explained that section 39 of the CHRA requires that the definitions of discriminatory practices in Part 1 of the CHRA, found in sections 5–14.1, be applied for the purposes of the CHRA’s remedial sections in Part III, which includes sections 53(2)(e) and 53(3) in Part III. Section 39 directs that the reference to “the discriminatory practice” in section 53 be one of the discriminatory practices statutorily recognized and defined by any of sections 5–14.1.

[48] Section 65 is not included in the definition of discriminatory practice in section 39. By specifying what is a discriminatory practice for the purposes of remedy in the CHRA, section 39 makes it clear what is not a discriminatory practice that may result in a remedy. Parliament excluded section 65 from the list of provisions in Part I of the CHRA that define discriminatory practices. Section 65(2) of the CHRA is not a discriminatory practice within the legislative scheme.

[49] As a result, the wording in section 65(2) that describes an employer’s obligations of due diligence for the purposes of exculpation from liability cannot be reasonably interpreted as wording that creates a discriminatory practice beyond those defined in sections 5–14.1; otherwise, section 65(2) would have been included as a discriminatory practice in section 39 or explicitly identified as such elsewhere in the CHRA.

[50] Nowhere does the CHRA expressly state that section 65(2) is intended to create a separate discriminatory practice by an employer outside of sections 5–14.1. An employer’s failure to exercise due diligence because it “…did not consent to the commission of the act

or omission and [had not] exercised all due diligence to prevent the act or omission from being committed and, subsequently, to mitigate or avoid the effect thereof" may contribute to or result in harm to an employee and constitute morally wrong conduct, but it is not a discriminatory practice to which the Tribunal's authority to order damages in section 53(2) of the CHRA may attach.

[51] As explained, section 65(2) is a statutory defence. This defence provides an opportunity for an employer to exculpate itself from the application of section 65(1) which, but for a successful defence pursuant to section 65(2), would otherwise deem the respondent employer to have engaged in the sexual harassment committed by their employee. The criteria for the application of the defence are addressed in the Liability Decision: if the respondent employer can prove that they did not fail to not consent to the harassment (stated here intentionally as a double negative), that they took appropriate preventative steps and that they exercised reasonable diligence to mitigate the effects of the discrimination against the victim of harassment, including a proper investigation of a complaint, they will be exculpated from the application of section 65(1) of the CHRA. They will not be deemed to have committed the same acts and omissions as the harassing employee.

[52] An employer may or may not choose to rely on a statutory defence; an employer's failure to utilize the opportunity to be exculpated pursuant to section 65(2) for the acts and omissions of its employee(s) does not constitute a breach of section 65(2). Instead, it means either that section 65(2) is not likely to be raised by the employer or that the Tribunal will find that section 65(2) does not apply.

[53] Section 53(2) does not support Ms. Peters' submission that UPS has engaged in a discriminatory practice pursuant to section 65(2) of the CHRA. Mr. Gordon is a person and UPS, a corporate entity, is defined as a legal person: *Interpretation Act*, RSC 1985, c I-21. However, for the purposes of section 53(2), Mr. Gordon is identified as "the person" whom the Tribunal found, in the Liability Decision, to have engaged in a "discriminatory practice" of sexual harassment contrary to section 14; the term "the person" is defined by its use in the CHRA and the *Interpretation Act*. In the context of the interpretation and application of

section 65(2) of the CHRA, UPS is not the person found to have engaged in the discriminatory practice of sexual harassment.

[54] In summary, section 65(2) of the CHRA does not provide the statutory authority to the Tribunal to find that UPS engaged in the discriminatory practice of sexual harassment for its own acts and omissions because of a lack of due diligence as the employer, separate and apart from the actions of the harasser, because section 65(2) is not a discriminatory practice. The Tribunal did not decide in the Liability Decision that UPS engaged in a discriminatory practice pursuant to section 65(2) of the CHRA because the wording of section 65(2) of the CHRA does not authorize the Tribunal to make that finding. There is no wording in section 65(2) that constitutes a discriminatory practice. To the contrary, by virtue of section 39, section 65(2) is effectively and expressly excluded from any opportunity to be interpreted as a discriminatory practice. The criteria for an award of damages in section 53(2) that UPS be "the person found to be engaging or to have engaged in the discriminatory practice" is not met pursuant to section 65(2).

[55] The statutory scheme established by Parliament clearly excludes the existence of a discriminatory practice in section 65(2). As explained, the Tribunal cannot read wording into section 65(2) that does not exist, nor can the Tribunal find that a discriminatory practice exists in relation to section 65(2) by necessary implication given the clear wording of section 39 which excludes section 65.

(b) Application of section 65(2)

[56] Section 65(2) is aligned with one of the purposes of the CHRA which is to encourage employers in the federal sector to proactively address discrimination, including sexual harassment, in their workplace so that the discrimination does not occur. When discrimination occurs through the acts and omissions of an errant employee, despite the employer's due diligence to prevent discrimination, section 65(2) is intended to encourage employers to ensure that the harmful effects of the discrimination are mitigated. To try to mitigate the effects of the discrimination, the employer needs to investigate what happened. This includes making reasonable efforts to communicate with the person who experienced

the discrimination, so that the employer is in a position to determine what the harmful effects are and how they can be mitigated for that person.

[57] The wording chosen by Parliament makes it clear that when a respondent employer successfully establishes a defence pursuant to section 65(2), the individual respondent bears all liability. Section 65(2) of the CHRA rewards employers who foster acceptable human rights practices in the workplace; it does not serve as a stand-alone discriminatory practice. To frame the conclusion for the purposes of this ruling, section 65(2) does not change the number of discriminatory practices in this complaint.

[58] Reading sections 65(2) and 53(2 together, the Tribunal lacks the statutory authority to make two awards of general damages for the discriminatory practice of sexual harassment, one for Mr. Gordon's conduct and one for UPS's conduct in relation to its failed statutory defence pursuant to section 65(2).

(iii) How should section 65(1) of the CHRA be interpreted and applied for the purposes of jurisdiction?

(a) Interpretation of section 65(1)

[59] Section 65(1) of the CHRA creates statutory liability for respondent employers for the acts and omissions of their employees who discriminate, unless the employer can establish that they meet the criteria to invoke the statutory defence in section 65(2). Section 65(1) creates a presumption of employer liability: *Bouvier v. Metro Express*, 1992 CanLII 1429 (CHRT), aff'd *Canada (Human Rights Comm.) and Bouvier v. Canada (Human Rights Tribunal)*, 1993 CanLII 16518 (FC) [*Bouvier*]. Section 65(1) creates a presumption because it applies unless the Tribunal determines that a respondent employer is entitled to be exculpated from liability for the actions of its harassing employee pursuant to section 65(2).

[60] When section 65(1) applies, this statutory version of liability is a strict form of liability: Liability Decision at paras 333 and 336. The statutorily created liability in section 65(1) is somewhat similar in concept to the principle of strict liability in tort law in the common law. Section 65(1) is a form of strict liability because of its presumptive application, Parliament's use of the wording "shall" in section 65(1), which seems intended to be mandatory in this

context, and because section 65(1) does not create distinctions that could be exceptions. Further, like strict liability in tort law, the application of section 65(1) is subject to what can generally be described as a due diligence defence which is, in essence, included by Parliament in the CHRA by the addition of former section 48(6), now section 65(2).

[61] This statutorily created liability is not identical to vicarious liability. In *Robichaud v. Canada (Treasury Board)*, 1987 CanLII 73 (SCC), [1987] 2 SCR 84 [*Robichaud*], the Supreme Court of Canada found that the CHRA as a statute required that employers be liable for all acts of their employees despite the absence of a specific provision to this effect. I highlight the fact that the Court in *Robichaud* did not decide that case based on what is now section 65(1) of the CHRA. However, the Supreme Court of Canada concluded that the statutory liability within the CHRA is specific to the provisions of the CHRA and must be interpreted as such. This includes the Court's conclusion that liability under the CHRA is not "fault-oriented" (at paragraph 11) and differs from vicarious liability under the law of tort, which is limited to acts that fall within an employee's job (at paragraph 12). Instead, employer liability is based on the purposes of the CHRA (at paragraph 13). At paragraph 17, the Court commented that "[i]t is unnecessary to attach any label to this type of liability; it is purely statutory". The Court, however, acknowledged that the statutory liability created by the CHRA was similar to vicarious liability.

[62] Likewise, section 65 is a purely statutory version of employer liability under the CHRA and should be interpreted as such. While not the same as vicarious liability in the context of the law of tort, section 65, in a general sense, as a statutory liability provision, is similar to the extent that it creates liability for employers for the acts of their employees if section 65(2) does not apply. Because of the requirements an employer must satisfy to rely on the defence in section 65(2), section 65(1) may create liability for employers when they are not directly at fault and regardless of the employer's intentions (a similar conclusion to that found in *Robichaud*, at paragraph 15). This includes instances where an employee unintentionally engages in discrimination due to a lack of knowledge and understanding because of the employer's lack of due diligence to prevent discrimination in the workplace, as an example. This analysis of section 65(1) is consistent with the conclusion of the Supreme Court of Canada that a finding of discrimination does not require an intent to discriminate: *Ontario*

Human Rights Comm. v. Simpsons-Sears Ltd., 1985 CanLII 18 (SCC), [1985] 2 S.C.R. 536 at para 14.

[63] Whether an employer could be liable for the unauthorized acts of its employee, such as sexual harassment, was an issue in sexual harassment cases prior to the addition of section 48(5) (what is now section 65(1)) to the CHRA in 1983 (see *Robichaud*). Parliament appears to have addressed this issue through the wording of the former section 48(5) of the CHRA, now section 65(1), which establishes an employer's liability for its employees' acts "in the course of employment". The Supreme Court of Canada's decision in *Robichaud*, released post-amendment, interpreted this idea in the context of section 7(b) of the CHRA as "meaning work- or job-related", at paragraph 12, in determining that the CHRA contemplated that the employer would be liable for the acts of its employees whether authorized or not.

[64] Likewise, section 65(1) of the CHRA uses the wording "in the course of employment". Given the Supreme Court of Canada's interpretation in *Robichaud* and subsequent case law on this point, I conclude that section 65(1) includes unauthorized acts in relation to employment within the scope of the employer's liability.

[65] Section 65(1) also applies across the board for the purposes of all discriminatory practices in the CHRA where an employee is found to have engaged in discrimination, including sexual harassment, taking a consistent approach to all.

[66] As a reminder, section 65(1) of the CHRA states:

> **Acts of employees, etc.**
>
> **65 (1)** Subject to subsection (2), any act or omission committed by an officer, a director, an employee or an agent of any person, association or organization in the course of the employment of the officer, director, employee or agent shall, for the purposes of this Act, be deemed to be an act or omission committed by that person, association or organization.

[67] Pursuant to section 65(1) of the CHRA, the acts of sexual harassment by Mr. Gordon are deemed to be acts committed by UPS, unless section 65(2) applies. Conceptually, UPS is deemed to be the "person" who sexually harassed Ms. Peters and is deemed to have committed the same discriminatory practice. Section 65(1) provides express, clear language

that creates the liability of the respondent employer for its employee when the section applies.

[68] However, section 65(1) does not directly address the issue of remedy. Section 65(1) does not contain wording to the express effect that the Tribunal has the authority to issue an order of damages against UPS as if it is the harassing employee. Section 65(1) contains no reference to the Tribunal's authority to make an order awarding damages. It does not state that a separate award for the same acts and omissions as the harasser may be made against the employer, nor does it provide that the same remedy issued against the harasser may be issued against the employer. Section 65(1) of the CHRA does not state how it should be applied for the purposes of remedy. Section 65(1) establishes liability, not remedy.

(b) Application of section 65(1)

[69] Because section 65(1) of the CHRA does not state how it should be applied for the purposes of remedy, there is an issue regarding how it should apply to a complaint. This issue may be exacerbated in cases where more than one respondent is a named party. In my view, the starting point is that section 65(1) and sections 53(2)(e) and 53(3) should be read together and interpreted and applied in the context of the statutory scheme of the CHRA.

[70] It should also be apparent that, while section 65(1) creates liability for the employer, section 65(1) does not contain the words "discriminatory practice". As explained above in the context of section 65(2) of the CHRA, section 65(1) is not identified as a discriminatory practice in section 39 of the CHRA. Pursuant to section 39, section 65(1) does not constitute a separate and distinct discriminatory practice by the employer for the purposes of the CHRA for which the Tribunal could award separate damages against the employer pursuant to sections 53(2)(e) and 53(3).

[71] Section 65(1) does not expressly state that "the person" referenced in section 53(2)(e) who engaged in the discriminatory practice becomes the employer for the purposes of remedy nor does section 53(2) state that the employer is responsible for remedies when section 65(1) applies. Section 65(1) also does not indicate what happens to the original

liability of the harassing employee. It is unclear, based on section 65(1) alone, whether the employer also becomes liable, in addition to the employee, or whether the employer becomes liable instead of the employee. As noted above, this latter issue will be addressed separately. I leave aside for now the impact of the application of section 65(1) on the harasser's liability and their responsibility to pay any damages awarded.

[72] What is clear is that, through the mechanism of being deemed "the person" who engaged in "the discriminatory practice", the employer becomes liable for the purposes of an order of remedy issued by the Tribunal pursuant to section 53(2)(e). When section 65(1) applies, the respondent employer is deemed to have committed the acts of its employee that constitute the discriminatory practice (in this case, sexual harassment) in the course of employment. I conclude that any damages ordered pursuant to section 53(2) of the CHRA against "the person" are effectively deemed the responsibility of the respondent employer of "the person". I reach this conclusion despite the absence of express, plain language in the CHRA stating that, when section 65(1) applies, remedies may be ordered against the employer as "the person" referenced in section 53(2). I do so because the CHRA is remedial legislation and due to the Supreme Court of Canada's decision in *Robichaud* and the cases that have followed it.

[73] First, the CHRA's objectives would be rendered meaningless if remedies could not be ordered against the employer when the employer is found liable. It would be unreasonable, if not absurd, for the CHRA to deem UPS legally responsible for Mr. Gordon's discriminatory practice by virtue of section 65(1) but not hold UPS responsible to pay any damages that the Tribunal ordered to address the harm that Mr. Gordon's discriminatory practice caused.

[74] In reaching this conclusion, I adopt the reasoning of the Supreme Court of Canada in *Robichaud*. As explained (in part) above, *Robichaud* concerns a complaint of sexual harassment filed against an employer and a supervisor in 1980 pursuant to section 7 of the CHRA before the addition of section 14 to the CHRA which made harassment a specific discriminatory practice. The complaint in *Robichaud* also predated the inclusion of any express language in the CHRA, like section 65(1), which explicitly deems an employer to have committed the same acts or omissions of its employee.

[75] As explained, the CHRA had been amended in 1983 to add sections 48(5) and 48(6) (which later became sections 65(1) and 65(2)). However, the Court decided that the amendments did not apply to Ms. Robichaud's complaint. As an aside, Justice La Forest, who wrote the judgment on behalf of the Court, made this comment about the addition of the sections that became section 65, at paragraph 20:

> …Parliament was free to adjust liability in any way it wished, whether by imposing a greater or lesser burden on an employer than would have been the case before the amendments. Precisely what balance was achieved by these new provisions, I need not consider. They do not operate retrospectively and all we are concerned with here is the law as it existed when the activities complained against took place.

The Supreme Court of Canada did not comment further on the meaning and effect of former sections 48(5) and 48(6) beyond noting that "they expressly impose liability upon an organization for the conduct of its employees, subject to a defence of due diligence on its part."

[76] In any event, the Supreme Court of Canada decided in *Robichaud* that remedies were available against the employer without statutory language like that in section 65(1). At paragraph 17, Justice La Forest continued his comment about an employer's liability under the CHRA, referenced above, that:

> It is unnecessary to attach any label to this type of liability; it is purely statutory. However, it serves a purpose somewhat similar to that of vicarious liability in tort, by placing responsibility for an organization on those who control it and are in a position to take effective remedial action to remove undesirable conditions.

[77] The Supreme Court of Canada concluded that the legislative scheme of the CHRA permitted the employer to be held liable because it had to be possible to hold the employer liable to achieve the statutory goal of a healthy workplace. The Court reached this conclusion because of the remedies in the statute.

[78] At paragraphs 13 and 14, the Court found this authority in the statutory language of the remedial sections of the CHRA that are now sections 53(2) and 53(3) of the CHRA. The Supreme Court of Canada decided, in part, that sections 41(2) and 41(3) of the *Canadian Human Rights Act*, S.C. 1976–77, c.33 (now sections 53(2) and 53(3) of the CHRA)

authorized the Tribunal to make an order against the employer of the person found to have engaged in a discriminatory practice because sections 41(2) and 41(3) contained remedial terms that only an employer could implement or enforce in the workplace. These terms included, for example, to "…take measures, including adoption of a special program, plan or arrangement… to prevent the same or a similar practice from occurring in the future…", to provide the harassed employee with "such rights, opportunities or privileges…" within the workplace or to "compensate the victim… for any or all of the wages that the victim was deprived of and any expenses incurred… as a result of the discriminatory practice…". At paragraph 15 of *Robichaud*, Justice La Forest summed up the implication of section 41 for the jurisdictional issue in that case: "It is clear to me that the remedial objectives of the Act would be stultified if the above remedies were not available as against the employer".

[79] Justice La Forest continued at the same paragraph:

> Who but the employer could order reinstatement? This is true as well of para. (c) which provides for compensation for lost wages and expenses. Indeed, if the Act is concerned with the effects of discrimination rather than its causes (or motivations), it must be admitted that only an employer can remedy undesirable effects; only an employer can provide the most important remedy--a healthy work environment.

[80] Sections 53(2) and 53(3) contain the same "carefully crafted remedies" as described in *Robichaud* that were in former sections 41(2) and 41(3) of the CHRA. Section 65(1) deems UPS to have conducted itself just like Mr. Gordon. No doubt Parliament intended to make it clear that an organization was liable for the conduct of its employees whether their actions were authorized or not through the later addition of the statutory language that eventually became section 65(1) of the CHRA.

[81] The Supreme Court of Canada's conclusion in *Robichaud* that statutory remedies cannot be nullified leads the Tribunal to conclude that it must give effect to the remedies in sections 53(2) and 53(3) in deciding what is intended by section 65(1). Section 65(1) and 53(2) ought to be read together and applied. If the employer is deemed to have committed the same acts and omissions as the harasser, clearly the potential for appropriate remedies should follow.

[82] The overall remedial nature of the CHRA and the principle that statutory remedies for complaints should not be rendered meaningless distinguishes this case from the decision in *Mowat SCC* where the absence of an express remedial provision authorizing legal costs negated the ability of the Tribunal to award that one remedy. In *Robichaud* and in this case, the issue is whether the Tribunal may order any remedy under sections 53(2) and 53(3) of the CHRA against the employer. I conclude that the Tribunal may order remedies against UPS as the respondent employer for the acts and omissions of its employees because section 65(1) of the CHRA applies.

[83] In summary, the statutory authority to make an award of general damages against a respondent employer for its employee's conduct is not found in section 65(1) alone but arises from reading sections 65(1) and 53(2)(e) together in light of the remedial nature of the CHRA. Once the Tribunal determines that section 65(1) applies and that the employer is liable, the Tribunal may issue a remedial order against the employer because the employer is deemed to legally stand in the shoes of the employee. All of the remedies in section 53(2) become potentially available against the respondent employer; the Tribunal's authority to award the statutorily available remedies in the CHRA arises by necessary implication so that the availability of these remedies is not nullified. Without expressly stating that the Tribunal is to hold the employer liable for the harasser's conduct or mentioning that this is for the purpose of ordering remedies against the employer, section 65(1) can only reasonably lead to this result.

[84] In *Bouvier*, the Tribunal concluded at paragraphs 38–39 that:

> All of the provisions of the Act relating to remedies deal with the employer's liability. Section 65 in particular, which expands that liability by creating a presumption, clearly provides that discriminatory acts committed by an employee of any person, association or organization shall be deemed to be an act committed by that person, association or organization. [Emphasis added.]

This undoubtably includes the Tribunal's authority to make an award of general damages against a respondent employer for the conduct of its employee pursuant to sections 65(1) and 53(2)(e) of the CHRA.

(iv) Section 65(1) of the CHRA does not provide the Tribunal with the statutory authority to award separate damages pursuant to section 53(2)(e) for sexual harassment against UPS

[85] At this juncture of the analysis, it is clear that, once section 65(1) applies, the Tribunal may issue a remedial order against the employer. This regularly occurs before the Tribunal. For example, in this case, the Tribunal has found that, for purposes of remedy, UPS is the person who engaged in a discriminatory practice that occurred contrary to section 7 of the CHRA. This discriminatory practice involved the acts and omissions of employees other than Mr. Gordon. UPS was found liable for the acts and omissions of those employees because section 65(1) of the CHRA applies, as outlined in the Liability Decision (at paras 769–772). The Tribunal, in theory, may issue an order of damages pursuant to sections 53(2)(e) and 53(3) of the CHRA against UPS for the discriminatory practice committed pursuant to section 7 of the CHRA. None of the employees involved in this other discriminatory practice were named as respondents, and no party is suggesting that UPS should pay a separate award of damages in addition to those that the Tribunal may award for the acts and omissions of the employees who engaged in the discriminatory practice pursuant to section 7. Ms. Peters and the Commission did not address this apparent incongruity in their positions regarding the two different discriminatory practices that have been established pursuant to sections 14 and 7 of the CHRA.

[86] In any event, for purposes of this ruling, the Tribunal may make an award of general damages against UPS for Mr. Gordon's conduct pursuant to sections 65(1) and 53(2)(e). As explained, the issue is whether the Tribunal has the authority to make a second award of damages against UPS as the employer.

[87] Sections 65(1) and 53(2) of the CHRA do not provide the Tribunal with the authority to make two separate awards of general damages to Ms. Peters for Mr. Gordon's conduct—one against Mr. Gordon and one against UPS. The fact that the Tribunal found Mr. Gordon to have engaged in the discriminatory practice of sexual harassment pursuant to section 14 of the CHRA and that UPS is deemed to have engaged in the same conduct as Mr. Gordon pursuant to section 65(1) of the CHRA does not mean that Ms. Peters was sexually harassed twice.

[88] Two awards of damages for the same harm or injury would constitute a double recovery of damages which is not legally permissible: *Hughes v. Canada (Attorney General),* 2019 FC 1026 (CanLII) [*Hughes*] at para 46 and see *Ratych v. Bloomer*, 1990 CanLII 97 (SCC), [1990] 1 S.C.R. 940 [*Ratych*] for analysis under the common law. The Tribunal should not award a double recovery (see *Hughes* above and *Willcott*, at paras 244–245). It is reasonable to conclude that Parliament presumed that the Tribunal would know and apply the legal principles espoused by the Supreme Court of Canada in *Robichaud* and in *Ratych;* in other words, Parliament expected that the Tribunal would make an order with terms, as appropriate, against the employer because of section 65(1) and, in doing so, would not apply the provisions of the CHRA to provide a double recovery to the complainant.

[89] Because the Commission submits that the Tribunal may make an award against each Respondent, the Commission implies that section 14 as a discriminatory practice could be applied twice by virtue of section 65(1), the first time interpreting “person” as the harasser and a second time interpreting the “person” as the employer, leading to two awards of damages. The lack of express authority in the CHRA for such an order and the presumption against double recovery remain obstacles to this approach. The Commission does not address these difficulties with its argument. With respect, it would be unreasonable to expand section 65(1), a provision that attaches liability to the employer, beyond its statutory wording by deciding that the provision grants authority to make a separate and additional award against the employer.

[90] As explained, naming the harassing employee as a respondent under the CHRA does not increase the number of discriminatory practices that the Tribunal can find. In those cases where the complainant names the harassing employee as a separate respondent, the respondent employer is almost always named as well. Alternatively, if two complaints are filed about the same harassment, one naming the alleged harasser and the other the employer, they are heard together.

[91] When section 65(1) of the CHRA applies in such a situation, the harasser and the employer are, in law, related respondents because section 65(1) deems the employer to have engaged in the discriminatory practice of its employee. The statutory mechanism of section 65(1) creates liability for the employer but, in doing so, does not increase the number

of discriminatory practices that occurred in the course of employment. There is no wording to this effect in the CHRA to authorize such a result. Consequently, naming the harassing employee as a respondent does not increase the number of awards of general damages that the Tribunal may issue.

[92] For these reasons, I do not agree that deeming the acts and omissions of the harasser to be those of the employer creates a second discriminatory practice by the employer or that a complainant whose employer has failed to establish a defence pursuant to section 65(2) of the CHRA has been harassed twice. Sections 65(1) and 53(2) do not provide the Tribunal with the authority to make two awards to Ms. Peters for Mr. Gordon's conduct: one against Mr. Gordon for his conduct and another against UPS for the same conduct. Ms. Peters is potentially entitled to one award of general damages for Mr. Gordon's sexual harassment.

(v) Section 14(1)(c) of the CHRA does not provide the Tribunal with the statutory authority to award separate general damages pursuant to section 53(2)(e) for sexual harassment against UPS

[93] As noted, in her request for general damages, Ms. Peters labelled UPS's conduct relating to its failure to exercise due diligence as sexual harassment. However, she did not suggest that other managers or employees, apart from Mr. Gordon, sexually harassed her at work. The Commission suggested in the context of addressing remedies that the Tribunal could make an award against both Mr. Gordon and UPS for sexual harassment pursuant to section 14 of the CHRA. Ms. Peters and the Commission did not explain how UPS had engaged in separate acts from those of Mr. Gordon that met the legal test for sexual harassment.

[94] Section 14 of the CHRA creates the discriminatory practice of sexual harassment:

> **Harassment**
>
> **14 (1)** It is a discriminatory practice,
>
> ….
>
> **(c)** in matters related to employment,
>
> to harass an individual on a prohibited ground of discrimination.
>
> **Sexual harassment**
>
> **(2)** Without limiting the generality of subsection (1), sexual harassment shall, for the purposes of that subsection, be deemed to be harassment on a prohibited ground of discrimination.

[95] The Liability Decision explained that section 14 does not provide the legal criteria for a finding of sexual harassment. Sexual harassment is defined by the case law, not in the CHRA. As explained, the legal test for sexual harassment is "unwelcome conduct of a sexual nature that detrimentally affects the work environment or leads to adverse job-related consequences for the victims of the harassment" as held in *Janzen*. [Emphasis added.] Sexual harassment consists of a pattern of persistent conduct or a single serious incident: *Franke* at para 43.

[96] To be clear, Ms. Peters suggests that UPS engaged in distinct acts of sexual harassment separate from those of Mr. Gordon. She references UPS's failure to have not consented to her harassment, to not have a policy or an effective policy, to not have engaged in training its employees on sexual harassment and its failure to conduct a timely and proper investigation into her complaint of harassment. The Tribunal agrees that UPS engaged in different acts than Mr. Gordon. Ms. Peters submits that the Tribunal should find that UPS engaged in the aforementioned "acts and omissions" five times to match the five discriminatory acts that she argued that Mr. Gordon committed. The Tribunal addressed this submission in the Statutory Cap Ruling.

[97] The legal test for sexual harassment involves the acts and omissions of the harasser, not the employer of the harasser, unless the employer is the harasser (i.e., the person

engaging in harassment directly). This would be the case where the harasser is the owner/manager of a small business.

[98] Leaving aside the latter situation, an employer that fails to "not consent" to another's harassment is not engaging in "unwelcome conduct of a sexual nature…." The act or omission the employer commits lies in its implied consent to the harassment because it did not make it clear that sexual harassment was not permitted. The employer's conduct may "detrimentally affect the work environment or lead to adverse job-related consequences for the victims of the harassment", but it must also involve unwelcome conduct of a sexual nature to meet the legal test for sexual harassment. An employer's failure to not consent to sexual harassment may be wrong, but it is not itself sexual harassment as defined in the case law.

[99] Similarly, an employer's failure to implement a policy that effectively prevents, addresses or mitigates sexual harassment does not constitute "the discriminatory practice of sexual harassment" before this Tribunal. An employer that fails to have a policy or workplace training is not engaging in "unwelcome conduct of a sexual nature that detrimentally affects the work environment or leads to adverse job-related consequences for the victims of the harassment" because of their lack of policy or workplace training. Failing to investigate is wrong but is not "engaging in unwelcome conduct of a sexual nature".

[100] The failure of an employer to have a policy or training or to investigate is directly relevant to the statutory defence in section 65(2) should a respondent rely on that defence to avoid liability. As noted by the Supreme Court of Canada in *Robichaud* at paragraph 19, in a case where an employee engages in sexual harassment, "…the conduct of an employer is theoretically irrelevant to the imposition of liability…". The Court's statement about the irrelevance of the employer's conduct to a finding of liability by its employee is still applicable to the CHRA, including section 65(1); the employer's conduct is, however, relevant to section 65(2).

[101] In this case, the facts that Ms. Peters relied on for an award of general damages because of UPS's conduct are relevant to why the Tribunal held UPS liable for Mr. Gordon's conduct in the Liability Decision. In theory, a finding of unwelcome sexual conduct by UPS

towards Ms. Peters, separate and apart from Mr. Gordon's conduct, is a necessary component of the legal test to substantiate an allegation that UPS engaged in the discriminatory practice of sexual harassment contrary to section 14. The Tribunal cannot issue a second award of damages for sexual harassment against UPS because UPS's conduct does not include unwelcome sexual conduct and therefore does not meet the legal test for sexual harassment pursuant to section 14 of the CHRA as defined in the case law. UPS did not engage in sexual harassment contrary to section 14 of the CHRA based on its own separate conduct from that of Mr. Gordon.

[102] The above is a theoretical analysis. As a corporation, UPS can only engage in sexual harassment through the acts and omissions of its officers, directors, employees or agents, the wording used in section 65(1) of the CHRA, wording which indicates the extent to which Parliament intended that section 65(1) would apply liability to the respondent employer for the acts and omissions of those who work on its behalf.

[103] In the Statutory Cap Ruling, I determined that the Tribunal may award damages for each separate, proven discriminatory practice in sections 5–14.1 of the CHRA but not for each incident or instances of the same discriminatory practice. Additionally, I concluded that there can only be one finding of a discriminatory practice of sexual harassment per complaint, regardless of the number of incidents or instances of harassment that occurred among legally related respondents in the workplace. I set aside the issue of whether, assuming another UPS employee did engage in sexual harassment, UPS would be a related or a separate respondent from Mr. Gordon in that specific context, or whether UPS, Mr. Gordon and any other employees who engaged in sexual harassment would be legally related respondents. Given the facts of this case, it is unnecessary to decide those issues here. I address below whether UPS and Mr. Gordon are related or separate respondents for the purposes of this complaint.

(vi) UPS's failure to provide a harassment-free, safe work environment for Ms. Peters does not provide the Tribunal with the statutory authority to award separate damages pursuant to sections 14(1)(c) and 53(2)(e) for sexual harassment against UPS

(a) Introduction

[104] As explained above, it is not in issue that an employer has an obligation to maintain a workplace that is free of sexual harassment. As also noted above, this was recognized in *Franke*: "[i]n recent years, courts and tribunals have insisted on a degree of vigilance over the work environment, which requires employers to provide a workplace free from harassment". However, the Federal Court in *Franke* did not consider how section 65 of the CHRA should be interpreted and applied for the purposes of awarding remedies against the employer. *Franke* concerned a judicial review of the Tribunal's decision to dismiss the complaint in that case. It does not appear that there is a Federal Court decision or a decision of the Supreme Court of Canada that has decided whether, under the CHRA, the Tribunal has the authority to award separate damages pursuant to sections 65(1), 14(1)(c) and 53(2)(e) for an employer's failure to provide a harassment-free work environment for its employees.

(b) Analysis of *Willcott*

[105] Ms. Peters points to the Tribunal's decision in *Willcott* and the allegation that the employer failed to maintain an environment free of harassment. Ms. Peters did not explain how *Willcott* or any of the cases she referred to for her motion or complaint support her position that UPS should pay its own separate award of damages for its own conduct in relation to Mr. Gordon's sexual harassment. *Willcott* did not decide the issue in this ruling. Only the employer was named as a respondent in that case. There was no issue of whether an award of damages could be made against both the manager and the respondent employer for the same or different conduct. Most importantly, *Willcott* made only a general assertion that there is the potential for an employer to be held liable for failing to maintain a workplace free of harassment. It did so without engaging in statutory analysis and interpretation of the language in the CHRA. *Willcott* is not, therefore, a persuasive authority

on the legal issue of whether the Tribunal has statutory authority to make a separate award of damages against a respondent employer for its failure to maintain a workplace environment free of harassment.

(c) Analysis of *Laskowska*

[106] The Commission relies on the decision of the HRTO in *Laskowska* to argue that the Tribunal can award damages for sexual harassment against UPS for its failure to not consent to the harassment or to prevent or mitigate the effect of the harassment.

[107] *Laskowska* was decided under the *Human Rights Code*, R.S.O. 1990, c. H. 19 (the "Ontario Human Rights Code") which contains provisions that allow a finding of discrimination against the employer if it fails to maintain a workplace that is free from sexual harassment and thereby authorizes a separate award of damages against the employer. In the Ontario Human Rights Code*,* an express right of an employee to be free from harassment in the workplace is contained in sections 5(2) and 7(2). Section 5(2) states: "Every person who is an employee has a right to freedom from harassment in the workplace by the employer or agent of the employer or by another employee because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sexual orientation, gender identity, gender expression, age, record of offences, marital status, family status or disability". Section 7(2) provides: "Every person who is an employee has a right to freedom from harassment in the workplace because of sex, sexual orientation, gender identity or gender expression by his or her employer or agent of the employer or by another employee".

[108] After sections 5 and 7 were added to the Ontario Human Rights Code, the HRTO decided how to interpret and apply those new sections in *Dhillon v. F.W. Woolworth Co*., 1982 CAN LII 4884 (ON HRT) [*Dhillon*]. *Dhillon* concluded that there was a right to a workplace environment free of harassment pursuant to sections 5 and 7 of the Ontario Human Rights Code. Pursuant to the Ontario Human Rights Code, damages may be awarded directly against the employer for breaching a complainant's right to freedom from harassment in the workplace. Holding the employer liable requires proving that there is a poisoned work environment which is a form of discrimination (for example, if an employee

suffers harm, including sexual harassment, due to a poisoned work environment, the failure of management to have taken steps to address the issue may amount to discrimination under section 5(1) of the Ontario Human Rights Code). In subsequent cases like *Laskowska,* decided under the Ontario Human Rights Code, the employer is found directly liable for not having exercised due diligence to prevent and mitigate the effects of discrimination, for example, through investigation and mitigating steps.

[109] The Ontario Human Rights Code does not apply in this case. The language of the CHRA is not the same as that of the Ontario Human Rights Code. *Dhillon* and *Laskowska* do not interpret and apply the CHRA. The CHRA takes a different legislative approach, making it a discriminatory practice in matters related to employment for a person "to harass an individual on a prohibited ground of discrimination". The employer is then held accountable for the acts and omissions of the person who engaged in the harassment (the "to harass" component in section 14(1)(c)), pursuant to section 65(1), unless section 65(2) of the CHRA applies.

[110] There is no provision in the CHRA that expressly states that it is a discriminatory practice for an employer to not maintain a workplace free of sexual harassment; this wording does not appear in sections 5–14.1 as a discriminatory practice. The CHRA does not create direct liability against the employer for failing to maintain a workplace free of sexual harassment. Instead, the presumption in section 65(1) operates to hold the employer liable for the conduct of its employee when the employee is found to have engaged in a discriminatory practice. The intended effect of section 65 is to require an employer to maintain a workplace free of harassment. However, a failure to do so is not a separate discriminatory practice; rather the employer will be held liable for the harasser's discriminatory practice.

(d) Analysis of *N.A.*

[111] The Commission argues that the Tribunal's decision in *N.A.* provides the authority for the Tribunal to make a separate award of damages against UPS, in addition to the award against Mr. Gordon. In *N.A.,* both the harasser and the employer were named as

respondents in two complaints that were consolidated. At paragraph 12, the Tribunal held that the complaints, alleging sexual harassment as a discriminatory practice within the meaning of section 14 of the CHRA, were substantiated against both the individual respondent and the corporate respondent. The Tribunal awarded damages for pain and suffering for sexual harassment against the harasser at paragraph 349. The Tribunal in *N.A.* also awarded separate general damages against the employer, likewise at paragraph 349. [At paragraph 353, the Tribunal took the same approach to special damages.]

[112] At paragraph 348, the Tribunal provided a limited analysis of its legal conclusions in this regard:

> The Tribunal notes its finding that in accordance with s.65 of the *CHRA*, the sexual harassment of the Complainant by the individual Respondent is deemed to be the act of the corporate Respondent. With that said the Tribunal finds that the corporate Respondents actions have also caused the Complainant pain and suffering. Moreover, the Complainant was publicly humiliated, belittled and traumatized by the owner of the corporate Respondent's handling of the matter and in particular the meeting on January 25, 2012.

[113] There are no reasons from the Tribunal about its decision (at paragraph 354) to order general damages against the harasser and not hold the employer responsible. Further, it appears that the Tribunal in *N.A.* awarded separate general damages against the employer because of its liability for the employee's harassment and for other reasons that involved the employer's handling of the complainant's complaint of sexual harassment. However, the Tribunal's legal analysis of the case before it in this regard was limited to paragraph 348, quoted above. Although there were additional findings against the employer, compared to the harasser, general damages were awarded against the employer in the same amount as that made against the harassing employee (at paragraph 349). The Tribunal did not provide reasons why. At paragraph 327, the Tribunal made an alternative finding in *N.A.* that the respondent employer discriminated against the complainant by terminating her employment because of the harassment contrary to section 7(a) of the CHRA. However, the Tribunal did not specify what discriminatory practices were included in the award of general damages that it made against the employer (at paragraph 354).

[114] At paragraphs 42 to 45 of *N.A.,* the Tribunal correctly acknowledged that the employer's conduct is relevant to the potential application of the statutory defence in section 65(2) of the CHRA. However, it seems that, in *N.A.*, the Tribunal assumed that employer liability pursuant to section 65(1) is the equivalent of a separate discriminatory practice by the employer based on the criteria in section 65(2). The Tribunal did not explain the basis of its separate award against the employer based on the statutory language in the CHRA. The Tribunal in *N.A.* did not explain why failing to establish a defence pursuant to section 65(2) constitutes a discriminatory practice by the employer, nor did it address the issue of double recovery or decide how many discriminatory practices it could award. It is not apparent what general damages it awarded against the employer pursuant to section 65 and what amount was awarded for other reasons (at paragraph 354). *N.A.* is not a persuasive authority for these reasons.

[115] The Tribunal in *N.A.* relied on case law in deciding to make a separate award against the employer. However, that does not alter my conclusion that *N.A.* is not a persuasive authority in regard to how damages should be awarded under the CHRA.

[116] One reason the Tribunal in *N.A*. concluded that it could award separate damages against the employer is its analysis of *Robichaud* at paragraph 46. The Tribunal noted that the Supreme Court of Canada in *Robichaud* interpreted section 65 and determined that it was a "remedial provision". The Tribunal pointed out that Justice La Forest had clarified in *Robichaud* that the purpose of the CHRA and "the employer liability provision" is remedial. It appears that by "remedial provision", the Tribunal was referring to section 65(1) and possibly section 65(2) and its language about the employer's due diligence. With respect, it seems that the Tribunal in *N.A.* misapprehended the nature and extent of the Supreme Court's decision in *Robichaud. Robichaud* decided that the CHRA was remedial legislation. The Court concluded that statutory remedies could be ordered against the employer for the acts of their employee. However, the Court did so for reasons that did not include or rely on "a remedial provision" like sections 65(1) and 65(2). As explained, *Robichaud* concerned the interpretation of the CHRA when former section 48(6), now section 65(2), did not apply. The Supreme Court of Canada did not decide in *Robichaud* how section 65 should be interpreted and applied. *Robichaud* is not an authority for awarding a separate, second

award of damages against a respondent employer pursuant to either sections 65(1) or 65(2) of the CHRA.

[117] The Tribunal in *N.A.* also seems to rely on *Hinds v. Canada (Employment and Immigration Commission),* 1988 CanLII 109 (CHRT), 10 C.H.R.R. D/5683 (C.H.R.T.) ("Hinds"), which did apply section 48(6) of the CHRA, now section 65(2). In *Hinds*, the identify of the employee who discriminated against Mr. Hinds was never determined. The order of damages was issued against the employer in part because the employer was the only named respondent. *Hinds* may be distinguished because it is not a case where separate damages were awarded against both the harasser and the employer for the same discriminatory practice.

[118] However, the primary reason that *Hinds* should be distinguished is because the Tribunal in effect only considered what is now section 65(2) and did not decide how what are now sections 65(1) and 53(2)(e) should be interpreted and applied. It took into account the indifference of the employer to the incident that occurred in the workplace. The Tribunal therefore took into account the actions of the employer that were separate from the original harassment in awarding damages. The Tribunal did so based on an employer's duty to exercise "…all due diligence… to mitigate or avoid the effect" of the harassment, at p. 9. However, it did so without any analysis of its statutory authority to make an award of general damages against the employer for breach of that duty or its authority to award damages based on the conduct of both the harasser and the employer. *Hinds* provides no analysis of the language of the CHRA or the Tribunal's authority to treat the employer's conduct as part of the harasser's discriminatory practice in this regard. It is not persuasive.

[119] The Tribunal in *N.A*. did not consider these issues with *Hinds* in its reasons. Most of the authorities relied on in *N.A.* as authority for a separate award of damages against the employer rely on the concept of awarding damages against the employer based on the employer's failure to maintain a workplace free of sexual harassment that relate back to the statutory language of the Ontario Human Rights Code. It is apparent that this concept informed the Tribunal's conclusion that it was appropriate in that case to make a separate award against the employer. At paragraph 326 of *N.A.* and elsewhere, the Tribunal refers to the employer providing a harassment-free and safe workplace for employees. As explained

below, the Tribunal also relies on the approach in the Ontario case law, which is based on statutory language in the Ontario Human Rights Code that does not appear in the CHRA. The Tribunal in *N.A.* appears to have concluded, based primarily on the cases it referenced, that a failure by an employer to be exculpated pursuant to section 65(2) provides a basis for separate liability by the employer and, therefore a separate award of damages.

[120] This includes that the Tribunal in *N.A*. relied upon the rationale in *Laskowska*; it commented that "[t]he rationale underlying the duty to investigate a complaint of discrimination is to ensure that the rights under the Human Rights Code of Ontario (the Code) are meaningful" at paragraph 49. That is correct; however, the rights under the CHRA are meaningful because they create liability for the employer pursuant to section 65(1), not a separate discriminatory practice. The Tribunal did not consider its authority based on the language of the CHRA.

[121] At paragraph 48, the Tribunal in *N.A.* also relied on the decision of the HRTO in *Sutton v. Jarvis Ryan Associates et al*., 2010 HRTO 2421 (CanLII) [*Sutton*], at paras 130–33. In *Sutton,* the HRTO confirmed that a corporate respondent has a duty to investigate a complaint of discrimination or harassment at paragraph 130: "It is well established in the Tribunal's jurisprudence that an employer may be held liable for the way in which it responds to a complaint of discrimination". The Tribunal in *N.A.* did not address the fact that by "Tribunal", the HRTO was referring to itself.

[122] The extent of the difference between the CHRA and the Ontario Human Rights Code is illustrated by the HRTO's description of the parameters of the employer's potential separate liability in *Sutton* at paragraph 134:

> An employer can attract liability for its failure to investigate notwithstanding that a violation of the *Code* has not been made out. See *Nelson v. Lakehead University*, 2008 HRTO 41 (CanLII).

[123] The Ontario statutory scheme is different from that in the CHRA. Under the CHRA, there is no free-standing obligation on the employer to investigate or to provide a harassment-free environment that can lead to an award of damages against the employer whether there is a finding of harassment or not. The CHRA requires that the harasser be found to have engaged in sexual harassment for liability to attach to the employer.

[124] The Tribunal in *N.A.* also stated that it relied on the decisions of this Tribunal in *Bushey v. Sharma* 2003 CHRT 21 (CanLII) [*Bushey*] and *Naistus v. Chief,* 2009 CHRT 4 (CanLII) [*Naistus*] when it awarded separate general and special damages against both the respondent employer and the harassing employee. *Bushey* involved a case where only the harasser was a party, and the Tribunal issued damages against that employee. It could not reasonably be seen to provide authority for two separate awards.

[125] In *Naistus,* the Tribunal found that the respondent employer's intervention in the harasser's sexual harassment of the complainant "…did not constitute an exercise of all due diligence to prevent the sexual harassment from being committed and, subsequently, to mitigate or avoid its effect, within the meaning of s. 65(2)" of the CHRA. The Tribunal in *Naistus* treated section 65(2) as if it was a discriminatory practice. However, it did so without analysis and without reference to the wording of the CHRA. The Tribunal ordered the respondent employer to pay general damages (but not the employee harasser) and ordered the employee harasser to pay special damages (but did not find the respondent employer responsible for these damages despite its conclusion at paragraph 106 that the respondent employer was "…not entitled to rely on the exculpation provision in section 65(2) of the *CHRA*"). The Tribunal did not explain the reasons for its decisions on these matters. Although *Naistus* is a decision of this Tribunal, it does not persuasively establish that the Tribunal may award separate damages for the same discriminatory practice against both the respondent employer and the harassing employee.

[126] To the extent that the Tribunal issued two separate awards in *N.A.* against the harasser and the employer for the conduct of the harasser, the Tribunal respectfully disagrees in light of the analysis of the language of the CHRA in this ruling and the principle of double recovery. The Tribunal found the harasser in *N.A.* to have engaged in one discriminatory practice, namely sexual harassment. Pursuant to section 65(1) of the CHRA, the employer is deemed to assume legal responsibility for the actions of the harasser. For the reasons explained above, the Tribunal lacks the authority pursuant to sections 65(1) and 53(2)(e) to award the complainant two separate awards of general damages for one discriminatory practice—one against the harasser and a separate award against the

respondent employer for the same conduct. Sections 65(1) and 53(2)(e) of the CHRA do not authorize a separate award of damages against the employer.

[127] It is important to note that the jurisdictional arguments raised by the parties' submissions that led to the Statutory Cap Ruling, the Statutory Cap on Interest Ruling and this ruling were not raised in *N.A.* or canvassed by the Tribunal; therefore, the issues raised here were not considered. For that reason, as well, *N.A.* is not a persuasive authority for the purposes of this ruling.

(e) Divergence in decisions of this Tribunal

[128] The approach adopted in *N.A.* towards awarding damages was also taken in other decisions of this Tribunal, beyond those mentioned above, including cases that the parties relied on in their submissions for other reasons. See, for example, *Cassidy v. Canada Post Corporation & Raj Thambirajah*, 2012 CHRT 29 (CanLII) and *Bilac v. Abbey, Currie and NC Tractor Services Inc*., 2023 CHRT 43 (CanLII) [*Bilac*], although *Bilac* may not be as apt a comparator, given that the principal harasser was the directing mind of the corporate respondent. *N.A.* and other Tribunal cases that conclude that the employer respondent should pay a separate award of general damages appear to do so on the basis that the employer has a stand-alone legal obligation to provide a work environment free of harassment. However, in those other cases where the Tribunal made a separate award against the employer, the Tribunal was not asked to consider the issue of how the statutory cap in section 53 is to be applied. The Tribunal was not asked to decide how many awards of damages could be issued for each discriminatory practice. The issues regarding remedy in this case were not raised with the Tribunal by the parties. The issues in those cases did not engage the Tribunal in a statutory analysis of the CHRA to decide whether the Tribunal has the statutory authority to make a separate award against the employer and, if so, on what basis. None of these cases decided the issue in this ruling based on an interpretation of the wording of the CHRA. Cases where the Tribunal did not directly consider these issues are not persuasive authorities for the purposes of this ruling.

[129] There are, as well, many cases before the Tribunal where only the employer respondent is named as a party, and damages are only awarded against the employer, including sexual harassment complaints.

[130] While it is an Ontario case, in *Ibrahim v. Hilton Toronto*, 2010 HRTO 1671 (CanLII), the corporate employer had itself added to the proceedings and the General Manager removed as the named respondent. The General Manager was acting in his capacity as an employee in regard to all of his alleged discriminatory actions in the complaint. The corporate employer agreed that it would assume liability for any proven discriminatory actions of its employees. The complainant consented to the addition of the employer and the removal of the employee. Because of this change, the General Manager would no longer be available for the purpose of remedies. As an Ontario case, nothing turns on this decision; I mention it only to illustrate the extent to which parties in other jurisdictions may take a different approach.

[131] Likewise, in *Guay v. Canada (Royal Canadian Mounted Police)*, 2004 CHRT 34 (Can LII) [*Guay*], the complaint was filed against the respondent employer only. The Tribunal declined to add the individual employees who allegedly had engaged in the harassment as respondents. Nothing turns on this case either; *Guay* may be distinguished from this case because the issue was the addition of parties to a complaint, and the complainant in *Guay* was not seeking any remedy from the individual harassers, unlike the situation here. I mention this case, however, to further illustrate that there is divergence in the practice before the Tribunal.

[132] That some Tribunal cases award separate damages against both the respondent employer and the harasser may possibly reflect the fact that more than one respondent is named; on the other hand, there may be specific reasons to name the harasser as a respondent, such as where it is necessary to resolve the complaint or where a remedy is sought against that individual. Whether it is appropriate to award any particular remedy against an individual respondent is for the Tribunal to decide. In any event, those cases that do make more than one award for damages do not address why the naming of the alleged harasser should increase the number of discriminatory practices or damage awards under the CHRA and are, therefore, not persuasive.

(f) Conclusion

[133] Both the CHRA and the Ontario Human Rights Code share in common the desired effect of their statutory provisions: that workplaces be free of sexual harassment. The difference between the two lies in their approach to achieving this effect. In Ontario, an employer's failures in this regard may result in an award of damages against the employer because the statute makes this conduct "discrimination", whereas the CHRA does not contain statutory language in sections 5–14.1 that expressly makes it a discriminatory practice for an employer to fail to not consent to the harassment or to fail to prevent or fail to mitigate the harassment. Under the CHRA, it is not a "discriminatory practice" for an employer to fail to not consent to harassment, to fail to take sufficient steps to prevent and to fail to mitigate sexual harassment in the workplace; these criteria are instead a legal basis to hold the employer liable for the harassing employee's discriminatory practice pursuant to section 65. When the obligation of due diligence is not met under the CHRA, the employer will not be responsible to pay separate additional damages. However, the employer will have to pay the damages awarded for their employee's actions. To borrow a common analogy, under the legislative scheme in Ontario, the failure of the employer to protect the workplace from discrimination operates as a stick; under the CHRA, the employer's opportunity to protect the workplace serves as a carrot.

[134] Damages may only be awarded pursuant to sections 53(2)(e) to address harm arising from a discriminatory practice. The foundation of Ms. Peters' complaint regarding the discriminatory practice of sexual harassment is section 14, which may result in an award of general damages to her. However, there is no express legislative authority in the CHRA for the Tribunal to award an additional award of damages against the employer for failing to maintain a workplace free of harassment in addition to any damages awarded for the discriminatory practice of her harasser pursuant to section 14, based on the arguments presented by the Complainant and the Commission.

B. Application of the Statutory Cap Ruling: UPS and Mr. Gordon are not legally separate respondents

[135] The Statutory Cap Ruling is relevant because Ms. Peters and the Commission submit that, because there are two respondents, more than one discriminatory practice of sexual harassment should be found in this complaint. In effect, Ms. Peters asks the Tribunal to consider all of the factual events related to her experience of harassment and to decide that they constitute two separate instances of the discriminatory practice of sexual harassment: one by Mr. Gordon, the harasser, because he engaged in harassment and another by UPS, her employer, because of its flawed response to her complaint. I have explained above why UPS's flawed response to her complaint is not a discriminatory practice under the CHRA and, therefore, cannot result in a separate award of damages against UPS.

[136] As explained, Ms. Peters in fact alleged five different discriminatory practices of sexual harassment by each Respondent. In the Statutory Cap Ruling, the Tribunal determined that:

> 1) Damages may be awarded for each separate, proven discriminatory practice in sections 5-14.1 of the CHRA but not for each incident or instances of the same discriminatory practice;
>
> 2) There can only be one finding of the discriminatory practice of sexual harassment per complaint no matter how many incidents or instances of harassment occurred as among legally related respondents in the workplace; and,
>
> 3) Damages may be awarded against each legally separate respondent.

[137] In the Statutory Cap Ruling, the Tribunal determined that it does not have the jurisdiction to divide discriminatory practices into separate instances and incidents within one complaint and award damages on that basis. There can only be one finding of the discriminatory practice of sexual harassment per complaint, regardless of the number of incidents or instances of harassment involving legally related respondents in the workplace. Damages may, however, be awarded against each legally separate respondent.

[138] Although not articulated as such, Ms. Peters implicitly asks the Tribunal to find that Mr. Gordon and UPS are two legally distinct respondents for purposes of the harassment

she experienced. This would theoretically permit damages for sexual harassment to be awarded against each. As explained, both are separately named as parties; Mr. Gordon is a person, and UPS, a corporate entity, is defined as a legal person by the *Interpretation Act.* For the purposes of the allegations in the complaint, they are distinct, factually separate Respondents.

[139] However, Mr. Gordon and UPS are no longer legally separate respondents. The Tribunal has determined that section 65(1) of the CHRA applies. Section 65(1) alters the way in which liability normally attaches to those acts and omissions of a person that constitute a discriminatory practice. Section 65(1) deems UPS to have committed the same acts as Mr. Gordon. This is a key point: the effect of section 65(1) when it applies is that it deems UPS to have committed the discriminatory practice of Mr. Gordon. Once a finding is made that section 65(1) applies to the employer in relation to actions that are a discriminatory practice, the employer and the harassing employee are no longer legally separate respondents for the purposes of those actions and the discriminatory practice in question. They are legally related respondents regarding those acts and omissions. The employer is deemed to have committed the discriminatory practice of its employee. In this complaint, UPS and Mr. Gordon are related respondents because section 65(1) of the CHRA applies.

[140] Even if I am wrong in my conclusion that UPS and Mr. Gordon become legally related respondents when section 65(1) applies, the effect of the application of section 65(1) does not create two discriminatory practices out of one. Section 65(1) does not increase the number of discriminatory practices that occurred and the number of awards of general damages that the Tribunal may make.

[141] As determined in the Statutory Cap Ruling, only one finding of the discriminatory practice of sexual harassment can be made per complaint among legally related respondents in the workplace, regardless of the number of incidents or instances of harassment involved.

[142] The CHRA does not grant the Tribunal the authority to make two separate awards of general damages for sexual harassment, one against the harassing employee and another

against their respondent employer. The Tribunal may only issue one award of general damages for one discriminatory practice among related respondents; section 65(1) of the CHRA does not increase the number of discriminatory practices or the number of damage awards that the Tribunal may make per discriminatory practice.

VII. ANALYSIS: SPECIAL DAMAGES

Issue Two: May two awards of special damages be ordered against UPS as the employer, one award should Mr. Gordon be found to have engaged in wilful or reckless conduct, and a second award against UPS as the employer, should Mr. Gordon have engaged in wilful or reckless conduct? Or should UPS be found to have engaged in wilful or reckless conduct in relation to its failure to not consent, to prevent or to mitigate the sexual harassment engaged in by Mr. Gordon?

[143] The same principles of statutory interpretation and analysis explained above that apply to section 65 and section 53(2) apply to sections 65 and 53(3) of the CHRA. These provisions are to be read together in context, subject to any modifications to the analysis above in these reasons required by the text of section 53(3) of the CHRA. The point is that section 53(3) must be interpreted in accordance with its wording and the context of the other provisions in the CHRA. In general, I reach the same legal conclusions about the Tribunal's authority to make a separate award of special damages against the employer that I reached regarding general damages.

[144] Section 53(3) states the following:

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

[145] Section 53(3) is a hybrid provision in the sense that it concerns both liability for special damages and the availability of the remedy itself. It is a liability provision because it requires a finding that the employee's conduct, in committing the discriminatory practice, was wilful or reckless for the special damages potentially available in section 53(3) to be included as a term of an order. In these circumstances, the analysis begins with the fact that the

harassing employee, not the respondent employer, is the one who engaged in the discriminatory practice of sexual harassment. Section 53(3) of the CHRA requires that the Tribunal find that "the person [who] is engaging or [who] has engaged in the discriminatory practice" have done so wilfully or recklessly. When applying the liability aspect of section 53(3), the issue is whether the employee engaged in the discriminatory practice in a wilful or reckless way. Should there by a finding by the Tribunal to this effect, the remedy aspect of section 53(3) becomes a live issue. The Tribunal then decides whether special damages should be awarded and, if so, in what amount. Ultimately, section 65(1) applies and deems the respondent employer to have engaged in the same acts as the harassing employee and thereby to be legally responsible for those damages.

[146] The Tribunal found that Mr. Gordon is the person who engaged in the discriminatory practice of sexual harassment. The issue at this point in the analysis is whether "the person" engaged in sexual harassment in a wilful or reckless manner. An award of special damages depends on whether Mr. Gordon's sexually harassing comments or incidents of sexual, physical contact with Ms. Peters were wilful or reckless. When the Tribunal determines pursuant to section 53(3) of the CHRA whether the employee who engaged in the discriminatory practice did so wilfully or recklessly, the respondent employer's conduct is not directly in issue. As noted by the Supreme Court of Canada in *Robichaud* at paragraph 18, in a case where an employee engages in sexual harassment, "…the conduct of an employer is theoretically irrelevant to the imposition of liability…".

[147] Whether UPS will be liable for any wilful or reckless conduct by Mr. Gordon was effectively determined by the Tribunal when it decided in the Liability Decision that UPS could not rely on a section 65(2) defence. Pursuant to section 65(1), UPS was deemed to have committed the same harassing acts as Mr. Gordon and was, therefore, found liable for Mr. Gordon's sexual harassment of Ms. Peters. If Mr. Gordon's conduct towards Ms. Peters was wilful or reckless, UPS is deemed to have engaged in those wilful or reckless acts.

[148] If the Tribunal finds that Mr. Gordon engaged in wilful or reckless acts and UPS is deemed to have acted likewise by doing the same thing as Mr. Gordon, that does not mean that there were two instances or series of wilful and reckless conduct and that the Tribunal may issue two awards of special damages.

[149] Ms. Peters believes that UPS‘s lack of prevention, failure to investigate her complaint in a timely and appropriate way and failure to mitigate the effects of the discrimination on her warrants a separate award of special damages against UPS. However, there must first be a finding of liability against UPS for these actions pursuant to the CHRA. These acts and omissions by UPS do not constitute a discriminatory practice under the CHRA.

[150] This case involves one finding of discriminatory practice for sexual harassment, which has been made against Mr. Gordon. Section 53(3) does not authorize the Tribunal to make an award of special damages for conduct by the employer that has not determined to be a discriminatory practice within sections 5–14.1. Sections 53(3) and 65(1) read together do not allow a separate and additional award of special damages against an employer where there is no separate discriminatory practice by the employer for which another remedy in section 53 could be ordered. As explained above, a failure to prevent or respond to sexual harassment is not sexual harassment as sexual harassment has been defined in the case law and is, therefore, not the discriminatory practice of sexual harassment under section 14 of the CHRA. As also explained above, the employer and employee are deemed to be related respondents for the purposes of Mr. Gordon’s discriminatory practice through the application of section 65(1). All of this re-confirms that there has been one finding of the discriminatory practice of sexual harassment in this case.

[151] I acknowledge that Ms. Peters strongly believes that UPS’s conduct warrants a separate award of special damages. Further, in the Liability Decision, the Tribunal made factual findings about UPS’s failure to conduct any investigation of Ms. Peters’ complaints until September 2015 and other findings about UPS’s conduct that may have constituted wilful or reckless conduct from a moral perspective. However, under the CHRA, these factual findings are relevant to whether UPS can rely upon section 65(2) of the CHRA and be exculpated from liability for Mr. Gordon’s conduct.

[152] For the reasons explained above in this ruling and in the Statutory Cap Ruling, there can only be one award of special damages for wilful or reckless conduct in relation to one discriminatory practice. In part, this is because section 53(3) of the CHRA permits one award of special damages for that discriminatory practice. Naming both the alleged harassing employee and the respondent employer as parties to a sexual harassment complaint does

not increase the number of discriminatory practices or awards of special damages that the Tribunal may make.

[153] Before concluding this issue, I return to the fact that there are many Tribunal cases where only the employer is named as the respondent. Among those cases, there are decisions where the Tribunal's "wilful and reckless" analysis focuses either on the respondent employer's entire conduct, including the acts of its harassing employee, or on the respondent employer's failure to address the harassment issues: *André v. Matimekush-Lac John Nation Innu*, 2021 CHRT 8 (CanLII), *Young v. Via Rail Canada Inc*., 2023 CHRT 25 (CanLII), *R. L. v. Canadian National Railway Company*, 2021 CHRT 33 (CanLII). In these cases, the Tribunal's consideration of the respondent employer's post-harassment conduct for the purposes of special damages for sexual harassment was not challenged by the parties. In some cases, a number of employees were involved, engaging a broader set of circumstances compared to this case, where the issue was whether Mr. Gordon sexually harassed Ms. Peters. The Tribunal was not asked in these other cases to make more than one award of special damages for the same discriminatory practice of sexual harassment or to consider the issues regarding the interpretation of the CHRA for the purposes of awarding and assessing general and special damages in issue in this ruling.

[154] It remains my view that, because the wording of the CHRA requires that special damages be awarded for wilful or reckless conduct in relation to the discriminatory practice of sexual harassment, this involves Mr. Gordon's conduct in this case and not the criteria that are relevant to the application of section 65(2) to UPS. Ms. Peters and the Commission provided no argument or persuasive legal authority for this issue on which the Tribunal could conclude that it has the statutory authority to order special damages for the harasser's sexual harassment and a separate remedy of special damages for separate wrongful conduct by the employer that has not been found to be the discriminatory practice of sexual harassment. If Mr. Gordon's conduct was not wilful or reckless, I would not have the authority to award special damages based only on UPS's conduct in these circumstances, given the wording of the CHRA, despite the negative conclusions I reached about UPS's conduct in the Liability Decision.

VIII. CONCLUSION

[155] Because the Tribunal is not a court of law, it has no inherent authority to make a finding that a discriminatory practice has occurred based on the common law. This decision must fall within the statutory authority of section 39 of the CHRA, based on the discriminatory practices in sections 5–14.1 and the orders and terms of such orders permitted by sections 53(2) and 53(3) of the CHRA.

[156] Section 65(2) does not create authority for the Tribunal to find that UPS committed a separate, distinct discriminatory practice from that of Mr. Gordon on the basis that UPS is the employer and failed to exercise due diligence to prevent the discrimination and mitigate its effects. Pursuant to section 65(2), an employer's failure to have not consented to, to not have a policy or an effective policy, to not have engaged in training its employees about sexual harassment or to not have conducted a timely and proper investigation into a complaint of harassment means that the employer is liable for the harassment by the harassing employee pursuant to section 65(1). Given the statutory language in section 65(2) and otherwise in the CHRA, it would be a legal error to find that UPS engaged in a separate discriminatory practice of sexual harassment based on a provision in the CHRA that is not a statutorily recognized discriminatory practice such as section 14 or based on facts that are not demonstrated to be relevant to the legal test for sexual harassment in section 14 or to do so for reasons based on jurisprudence employing a statutory interpretation originating in the wording of the Ontario Human Rights Code rather than the CHRA.

[157] Because section 65 does not constitute a separate discriminatory practice as defined in the CHRA, it does not provide a jurisdictional basis for a separate award of damages against UPS pursuant to sections 53(2) and 53(3) of the CHRA. The Tribunal's remedial authority pursuant to section 53 to award damages is not engaged because of a respondent employer's failure to establish a section 65(2) defence, as is the case here.

[158] Sections 65, 53(2), 53(3), 39 and 14 of the CHRA do not provide the Tribunal with the authority to make two separate awards of general damages or special damages to Ms. Peters for Mr. Gordon's sexual harassment, one against Mr. Gordon for which UPS is

deemed legally responsible and a second against UPS for its failure to prevent or mitigate the employee's discrimination in the workplace pursuant to section 65(2) of the CHRA.

[159] The intended effect of section 65 of the CHRA is to educate and notify employers such as UPS that they are under a legal obligation to maintain a workplace for their employees free of sexual harassment if they wish to avoid liability for the discriminatory practices of their employees. However, under the legislative scheme of the CHRA, that legal obligation is not a stand-alone discriminatory practice for the purposes of the Tribunal's exercise of its remedial authority to order damages in section 53 or otherwise in Part III of the CHRA.

[160] Accordingly, while UPS's acts and omissions were not reasonable, appropriate or fair, they do not, as drafted in the CHRA, constitute a separate discriminatory practice by an employer in addition to the actual harassment engaged in by Mr. Gordon. Instead, the legislative scheme holds the employer responsible for the acts and omissions of its employee by deeming those acts and omissions to be those of the employer. The CHRA goes no further.

[161] I will add that because the Tribunal is not authorized to make a separate award of damages against UPS, it is not necessary for the Tribunal to decide whether UPS and Mr. Gordon are jointly and severally liable for a separate award against UPS for sexual harassment by UPS.

[162] Applying the Statutory Cap Ruling, the total global award that may be made to Ms. Peters for the discriminatory practice of sexual harassment cannot exceed the global statutory cap of $40,000. This includes a possible maximum of $20,000 in damages for pain and suffering and $20,000 in damages for wilful or reckless conduct, as determined by these facts and pursuant to this legislation. UPS and Mr. Gordon are not legally separate Respondents because of the Tribunal's finding in the Liability Decision that Mr. Gordon engaged in the discriminatory practice of sexual harassment as an employee of UPS, due to the application of section 65(1) of the CHRA. UPS is deemed to have engaged in the same discriminatory practice as Mr. Gordon as the employer pursuant to section 65(1) of the CHRA.

IX. APPLICATION OF LEGAL FINDINGS

Issue Three: What is the impact of this ruling on Ms. Peters' claim for personal remedies?

[163] Nothing in this decision is intended to suggest that the Tribunal's remedial authority in sections 53(2) and 53(3) is in some way curtailed other than its statutory authority to make a second award of damages for sexual harassment against the employer respondent because of section 65(1) of the CHRA. The Statutory Cap Ruling and this ruling read together resolve the issue of what number of damage awards for sexual harassment are legally permitted based on the arguments advanced in this case and the factual and legal findings in the Liability Decision.

[164] In summary, the Tribunal's statutory authority permits the following potential awards of damages to be made in this case pursuant to sections 53(2)(e) and 53(3) of the CHRA:

1. An award of general damages against Mr. Gordon and/or UPS of up to $20,000 for sexual harassment committed by Mr. Gordon contrary to section 14 of the CHRA;

2. An award of special damages against Mr. Gordon and/or UPS of up to $20,000 for sexual harassment committed by Mr. Gordon contrary to section 14 of the CHRA;

3. An award of general damages against UPS and/or Mr. Gordon of up to $20,000 for disability-based discrimination in relation to employment contrary to section 7 of the CHRA; and,

4. An award of special damages against UPS and/or Mr. Gordon of up to $20,000 for disability-based discrimination in relation to employment contrary to section 7 of the CHRA. *

[165] As a reminder, how the Tribunal is to interpret and apply section 65(1) of the CHRA to both of the Respondents for purposes of making any order to pay damages will be addressed in a related ruling. The use of the wording "Mr. Gordon and/or UPS" and "UPS and/or Mr. Gordon" above reflects the Tribunal's pending assessment of whether damages are to be awarded jointly and severally against each Respondent, as requested by Ms. Peters.

[166] *The Tribunal's authority to make this award is noted here; however, Ms. Peters who was represented by experienced counsel, did not request an order for special damages against UPS for this discriminatory practice. This theoretical claim will not be addressed further.

X. ORDER

[167] For the above reasons, the Tribunal's interim declaratory order in the Statutory Cap Ruling is amended to accord with paragraph 164 above until all remaining remedial issues are addressed. Based on the grounds argued by the Complainant and the Commission, the Tribunal further declares that the Tribunal does not have the statutory authority pursuant to the CHRA to make an order against UPS awarding damages to Ms. Peters for sexual harassment separate and apart from any order the Tribunal makes for the sexual harassment committed by Mr. Gordon for which UPS is liable.

Signed by

Kathryn A. Raymond, K.C.
Tribunal Member

Ottawa, Ontario
January 31, 2025

Canadian Human Rights Tribunal

Parties of Record

File No.: T2201/2317

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

Ruling of the Tribunal Dated: January 31, 2025

Motion dealt with in writing without appearance of parties

Written representations by:

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Linden Gorden, for the Individual Respondent