

**Canadian Human
Rights Tribunal**



**Tribunal canadien
des droits de la personne**

Citation: 2025 CHRT 69
Date: July 18, 2025
File No.: HR-DP-2871-22

Between:

Varun Kapoor

Complainant

- and -

Canadian Human Rights Commission

Commission

- and -

LTL Transport Ltd. and Robert McDougall

Respondents

Decision

Member: Colleen Harrington

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I. Background

[1] Varun Kapoor (Complainant) is a Canadian citizen who emigrated from India in 2006. Mr. Kapoor owns his own highway truck. He worked as an independent contractor for the Respondent company LTL Transport Ltd. (LTL) from October of 2017 until December of 2018. During this time Mr. Kapoor drove exclusively for LTL. He used his truck to pull LTL's trailers, hauling goods across Canada and the United States. LTL was owned by the other Respondent in this matter, Robert McDougall.

[2] Mr. Kapoor says that, although his working relationship with Mr. McDougall started off okay, his contract payments from LTL started to be delayed. When he approached Mr. McDougall about them, Mr. Kapoor says that Mr. McDougall became angry and used harsh language with him, including abusive, racist and discriminatory comments. Mr. Kapoor says that he became overwhelmed by stress due to Mr. McDougall's treatment of him and, because he had not been paid since mid-November of 2018, he ended his working relationship with LTL in December of that year. Mr. Kapoor communicated with Mr. McDougall by text and email to try to obtain payment for the amount owed to him for the loads he had hauled for LTL. Many of Mr. McDougall's responses to him contained language that was unquestionably racist.

[3] Mr. Kapoor filed a human rights complaint against LTL alleging that he was discriminated against on the basis of his colour, race, and national or ethnic origin. Although he did not specify which discriminatory practice LTL had allegedly engaged in, the "Summary of Complaint" form that the Canadian Human Rights Commission (Commission) included when referring his complaint to the Tribunal states that the complaint relates to section 7 of the *Canadian Human Rights Act*, R.S.C., 1985, c.H-6 [CHRA] and that the alleged discriminatory practice is "Employment – Adverse Differential Treatment".

[4] Mr. McDougall initially participated in the Tribunal's proceeding. However, he eventually stopped responding to the Tribunal and the parties. Mr. Kapoor filed a motion to add Mr. McDougall as an individual Respondent, in addition to LTL. Mr. McDougall did not respond to this motion. The Tribunal agreed to add Mr. McDougall as a Respondent in this proceeding (see *Kapoor v LTL Transport Ltd. and McDougall*, 2024 CHRT 88).

[5] Neither Mr. McDougall nor LTL participated in the hearing of this complaint, which took place over two days via Zoom videoconference. The Tribunal heard from Mr. Kapoor, who represented himself, as well as three witnesses that he called to testify. The Commission also participated in the hearing, eliciting testimony from the Complainant and the witnesses, and filing closing submissions.

[6] Mr. Kapoor and the Commission are asking the Tribunal to find that the Respondents discriminated against Mr. Kapoor while he worked for them, and for a period of time afterwards. They also ask that the Tribunal order individual and public interest remedies pursuant to section 53 of the CHRA, including lost wages and damages.

II. Decision

[7] The complaint is substantiated. I find on a balance of probabilities that Mr. Kapoor's race, colour, national origin and ethnic origin were factors in Mr. McDougall's adverse differential treatment of Mr. Kapoor during his employment relationship with LTL.

[8] The extensive and egregious racist comments made by Mr. McDougall towards Mr. Kapoor following the end of their working relationship, while he was attempting to receive payment for the loads he had hauled, convince me that it is more probable than not that Mr. McDougall used similar racist language towards Mr. Kapoor during his employment with LTL. I find that Mr. McDougall's negative, racist and stereotypical views about Mr. Kapoor, based on his race, colour, ethnic origin and national origin, were a factor in his decision to delay and withhold payments to Mr. Kapoor both during and following his employment. This constitutes discrimination contrary to section 7 of the CHRA. Mr. Kapoor is entitled to remedies from Mr. McDougall and LTL to make him whole.

III. The Respondents' failure to participate

[9] In order to comply with the principles of natural justice and procedural fairness, the Tribunal was required to give Mr. McDougall and LTL a full and ample opportunity, in person or through counsel, to appear at the inquiry, present evidence and make representations

(sections 48.9(1) and 50(1) of the CHRA). Although officially notified, the Respondents chose not to participate in the inquiry. While Mr. McDougall did participate in the Tribunal's process early on, even filing a Statement of Particulars and two further replies on behalf of LTL in which he denied discriminating against Mr. Kapoor, he eventually stopped participating in case management and stopped responding to correspondence from the Tribunal and the other parties.

[10] Although Mr. McDougall had ceased all communications relating to this complaint, the Tribunal decided to proceed with a hearing and continued sending him correspondence, in case he reconsidered and decided to participate. In addition to giving Mr. McDougall a chance to make submissions in response to the motion to add him as an individual Respondent, the Tribunal served him with a Notice of Hearing by email and by courier to his address, confirmation of which was provided by Purolator.

[11] Both the Notice of Hearing and the accompanying letter from the Tribunal indicated the dates and times for the hearing, as well as information about how to join the hearing via Zoom videoconference. The letter stated that, if he continued to ignore the correspondence of the Tribunal and if he chose not to participate in the hearing, the Tribunal would proceed with the hearing in his absence and make a decision based on the information provided at the hearing and the parties' closing submissions. The Notice of Hearing further stated that if he did not attend the hearing, he would not be entitled to any further notice relating to the Tribunal's proceeding.

[12] While the Tribunal made efforts to ensure Mr. McDougall continued to receive the necessary information to participate in its proceeding, he did not respond to the motion filed by Mr. Kapoor to add him as a Respondent, and he did not appear at the hearing in July of 2024.

[13] With the agreement of the Commission and Complainant, the Tribunal decided to proceed with the hearing in the Respondents' absence as permitted by Rule 9 of the *Canadian Human Rights Tribunal Rules of Procedure, 2021, SOR/2021-137*. The Tribunal was satisfied that Mr. McDougall and LTL had been provided with an ample opportunity to participate and were clearly notified of the hearing date, time and method.

IV. Mr. Kapoor and his witnesses were credible

[14] The Tribunal “can accept some, all, or none of a witness’ evidence depending, in part, on their credibility” (*Dicks v Randall*, 2023 CHRT 8 at para 6). The British Columbia Court of Appeal in *Faryna v Chorny*, 1951 CanLII 252 (BC CA) [*Faryna v Chorny*] noted that a witness’s “opportunities for knowledge, powers of observation, judgment and memory [and] ability to describe clearly what he has seen and heard”, along with other factors, combine to produce what is called credibility. The Court of Appeal described the approach that should be taken to assess credibility, stating that a decision maker hearing the evidence of a witness must consider whether their account of the facts is “in harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable” in the circumstances.

[15] The Tribunal is permitted to receive and accept any evidence that it sees fit, “whether or not that evidence or information is or would be admissible in a court of law”, so long as it is not privileged (ss. 50(3)(c) and 50(4) of the CHRA). This includes hearsay evidence.

[16] Considering the factors set out in *Faryna v Chorny*, I found Mr. Kapoor and his three witnesses, Harwinder Sran, Kevin St. John, and Karen Alexander, to be credible. Their evidence was reasonable, believable, and internally consistent. To the extent that they testified about things that Mr. McDougall said to them about Mr. Kapoor and other drivers of South Asian descent, their evidence was consistent with the evidence of Mr. McDougall’s own written correspondence with Mr. Kapoor.

[17] As the Respondents did not participate, the evidence of Mr. Kapoor and the other witnesses was not challenged. However, the Tribunal and the Commission did ask some questions that arose from the Statement of Particulars and replies filed on behalf of LTL by Mr. McDougall and that challenged Mr. Kapoor’s version of events. None of the evidence presented at the hearing contradicted Mr. Kapoor’s narrative. As a result, I have accepted the evidence of Mr. Kapoor and his witnesses in its entirety.

V. Issues

[18] I must decide the following issues:

- 1) Did the Respondents discriminate against Mr. Kapoor contrary to section 7 of the CHRA by delaying and withholding his payments and through Mr. McDougall's remarks, based at least in part on Mr. Kapoor's race, colour, and national and/or ethnic origin?
- 2) If Mr. Kapoor has established that he was discriminated against, what personal and/or public interest remedies should be ordered against the Respondents?

VI. Analysis

A. Issue 1: The Respondents contravened section 7 of the CHRA

[19] Section 7(b) of the CHRA says that "it is a discriminatory practice, directly or indirectly, in the course of employment, to differentiate adversely in relation to an employee, on a prohibited ground of discrimination."

[20] Mr. Kapoor must prove that the way he was treated by the Respondents was, on its face, discriminatory, which is more formally referred to as establishing a *prima facie* case of discrimination. A *prima facie* case is "one which covers the allegations made and which, if they are believed, is complete and sufficient to justify a verdict in the complainant's favour in the absence of an answer from the respondent" (*Ontario Human Rights Commission and O'Malley v Simpsons-Sears Ltd.*, 1985 CanLII 18 (SCC); [1985] 2 SCR 536 at para 28).

[21] To establish *prima facie* discrimination, Mr. Kapoor must prove that it is more likely than not (i.e., on a balance of probabilities) that:

- (i) he has one or more characteristics protected under the CHRA (i.e., a prohibited ground of discrimination);
 - (ii) he was treated in an adverse differential manner with respect to his employment;
- and

(iii) the prohibited ground of discrimination was a factor in the adverse treatment (see *Moore v British Columbia (Education)*, 2012 SCC 61 at para 33).

[22] The Respondents did not participate in the hearing. As such, they did not provide an alternate, non-discriminatory explanation for their conduct. Therefore, the Tribunal's task is to consider all the evidence and arguments presented by Mr. Kapoor and the Commission to determine if Mr. Kapoor has established, on a balance of probabilities, a *prima facie* case of discrimination (see *Quebec (Commission des droits de la Personne et des droits de la jeunesse) v Bombardier Inc. (Bombardier Aerospace Training Centre)*, 2015 SCC 39 [*Bombardier*] at paras 56 and 64; see also *Peel Law Association v Pieters*, 2013 ONCA 396 at paras 80-89).

(i) Mr. Kapoor has characteristics protected under the CHRA

[23] Mr. Kapoor has met the first element of the *prima facie* discrimination test. Race, colour, national origin and ethnic origin are all prohibited grounds of discrimination under section 3 of the CHRA. Although the CHRA lists them as discrete prohibited grounds, they are often used interchangeably in cases relating to racial discrimination. Complainants often file their complaints on the basis of all four prohibited grounds and the Tribunal's decisions to date have not analyzed in much detail the differences between these grounds. This is not unique to the federal human rights system. Joshua Sealy-Harrington and Jonnette Watson Hamilton, in their paper "Colour as a Discrete Ground of Discrimination" ((2018) 7:1 Can J Hum Rts 1; 2018 CanLIIDocs 106), note that, in almost every Canadian human rights case that includes a claim of racial discrimination, the grounds of race, colour, ancestry, place of origin, ethnic origin and national origin are used synonymously (p. 5).

[24] The CHRA does not define any of these prohibited grounds, which is also not unique amongst Canadian human rights legislation. The Ontario Human Rights Commission has published a fact sheet on "Racial discrimination, race and racism" which states:

"Race" is a prohibited ground of discrimination in the Ontario *Human Rights Code* (the "*Code*"), but like racial discrimination, it is not specifically defined. The Commission has explained "race" as socially constructed differences among people based on characteristics such as accent or manner

of speech, name, clothing, diet, beliefs and practices, leisure preferences, places of origin and so forth. The process of social construction of race is called racialization: “the process by which societies construct races as real, different and unequal in ways that matter to economic, political and social life.”

[25] Similarly, the Canadian Human Rights Commission, in a “Discussion paper on systemic racism”, available on its website, notes that, while race is not defined in the CHRA, the Commission understands race “to be a social construct, rather than something innate or biological in people”. It refers to the Government of Canada’s Anti-Racism Strategy, which states that “society forms ideas of race based on geographic, historical, political, economic, social and cultural factors, as well as physical traits, even though none of these can legitimately be used to classify groups of people.”

[26] The Commission, relying on the Canadian Race Relations Foundation’s Glossary of Terms, notes that the “process by which groups of people come to be socially constructed as races, based on characteristics such as skin-colour, ethnicity, language, economics, religion, culture, politics, etc. is called ‘racialization’.”

[27] Sealy-Harrington and Watson Hamilton note in their paper that courts and tribunals assume that the “colour” ground of discrimination “refers to the visible physical characteristic of skin tone or hue – the physical appearance alone, without a cultural component” (p. 9). However, the authors note that “colourism usually refers to hierarchies based on the spectrum of skin colour within a racialized group, namely, intra-group differentiation”, although they understand colourism to actually be “multi-directional” in terms of who is disadvantaged, “and to be inter-group [as] well as intra-group” (pp. 10-11).

[28] The Tribunal understands national origin to refer to the nation or place one comes from, and would apply, for example, to cases involving migrant workers or immigrants to Canada. Ethnic origin differs from national origin, although these two grounds are often linked. This is not surprising given that the CHRA itself essentially combines the two grounds in section 3(1), referring to them as “national or ethnic origin”. I take ethnic origin to refer to one’s ethnicity or membership in an ethnic group that shares a common cultural background or traditions, regardless of one’s national origin.

[29] An example of a Tribunal case in which national origin and ethnic origin were named as grounds of alleged discrimination is *Rampersadsingh v Wignall*, 2002 CanLII 23563 (CHRT). In that case, the complainant was from Trinidad, which was identified as her national origin or nationality. She was of South Asian descent (referred to in the decision as “East Indian”), which the Tribunal identified as her ethnic origin or ethnicity. Trinidad, like Canada, is a country populated by people from different parts of the world, with both different national and ethnic origins.

[30] In the present case, it was entirely appropriate for Mr. Kapoor - as a South Asian person who had immigrated to Canada from India - to list all four prohibited grounds of discrimination, as they are certainly all implicated in the way he was treated by the Respondents. Mr. McDougall referred to Mr. Kapoor in various ways one would commonly accept as being “racist”, that refer to or implicate his colour, national origin, ethnic origin and race. Mr. Kapoor’s witnesses testified that Mr. McDougall made similar comments to them about Mr. Kapoor and other drivers of South Asian descent.

(ii) Mr. Kapoor was treated in an adverse differential manner with respect to his employment

[31] To satisfy the second part of the *prima facie* test, Mr. Kapoor must establish three factors set out in section 7(b) of the CHRA: (a) that he was treated in an adverse differential manner; (b) that he was an employee; and (c) that the Respondents were acting in the course of employment at the time of the adverse differential treatment.

[32] I will first set out the evidence provided at the hearing by the Complainant and his witnesses that relates to these three aspects of section 7(b), and then determine whether each factor has been established.

(iii) Facts

[33] Mr. Kapoor signed a contract called an “Owner Operator Lease Agreement” (Lease Agreement) with LTL on October 12, 2017, in which he agreed to pick up and deliver loads on behalf of LTL, using his own truck and LTL’s trailers. According to the Lease Agreement,

he would receive 78% of the cost of delivering the load, and LTL would receive 22%, although Mr. Kapoor testified that this was eventually changed to 80% to him and 20% to LTL. Mr. Kapoor was responsible for the fuel and maintenance on his truck, but LTL was responsible for the maintenance of its trailers.

[34] Mr. Kapoor testified that LTL paid for his truck's licence plates and insurance and then deducted these costs from his pay. He testified that Mr. McDougall would book the loads for the drivers to pick up and advise them how much they would be paid for hauling the load. Mr. McDougall provided them with fuel cards and the permits required to haul their particular load through the relevant jurisdiction. In order to reimburse LTL for the amount charged to the fuel cards at the end of the month, Mr. McDougall would deduct this amount from what he owed the drivers. He paid Mr. Kapoor by way of e-transfer.

[35] Under the terms of the Lease Agreement, Mr. Kapoor could only drive for LTL. The contract was for a year at a time, until either party terminated the agreement with written notice to the other. Mr. Kapoor's truck was branded with LTL's name on removeable decals so someone seeing his truck would assume that he worked for LTL. The Lease Agreement stated that LTL leased the equipment and services of Mr. Kapoor, during which time LTL "shall have possession of this equipment, control as agreed by [Mr. Kapoor] and use of the equipment and will assume full responsibility for the operation of the equipment as agreed by [Mr. Kapoor] for the duration of the lease."

[36] Mr. Kapoor said the owner and manager of LTL, Mr. McDougall, was the only person he dealt with at LTL and the only person he was aware of that worked there. Mr. Kapoor testified that he spoke to Mr. McDougall by phone, text or email several times per day when he was driving for him. He testified that things ran quite smoothly, in a business-like manner, with LTL for about the first six months. Mr. McDougall paid him for his trips and Mr. Kapoor would sometimes do maintenance on LTL's trailers even though this was not his responsibility. Mr. McDougall would praise him for doing this.

[37] Mr. Kapoor testified that, during the last six to eight months that he worked for LTL, things became "very bad" with Mr. McDougall. He said his payments started to be delayed and were incomplete and, when he would ask Mr. McDougall about being paid, Mr.

McDougall would “talk rough” with him. Mr. Kapoor testified that, as part of this rough talk, Mr. McDougall used discriminatory language toward him.

[38] Mr. Kapoor said that Mr. McDougall would also deceive him with respect to how much a certain job would pay. For example, he would tell Mr. Kapoor he was doing a \$7,000 job when it was really a \$10,000 job, so that he could pay Mr. Kapoor 80% of the lower amount and keep the rest for himself. Mr. Kapoor said that Mr. McDougall would also accuse him of damaging his trailers. In fact, Mr. Kapoor said he took very good care of LTL’s equipment and Mr. McDougall even used to complement him for doing so compared to other drivers. Mr. McDougall would use these false accusations as reasons for refusing to pay Mr. Kapoor.

[39] Mr. Kapoor also testified that he and others driving for LTL would “get caught in inspection areas” and be ticketed for infractions, such as having fake paperwork and permits that had been provided by LTL, or because LTL’s trailers were in poor condition. Mr. Kapoor’s witness, Ms. Alexander, corroborated Mr. Kapoor’s testimony about LTL’s trailers needing repairs and testified that she would have to repair them herself at her own cost and LTL would not reimburse her for this. She confirmed Mr. Kapoor’s evidence that Mr. McDougall would sometimes provide drivers with fake or photocopied permits, which is illegal and can get the drivers in trouble with provincial governments.

[40] Mr. Kapoor testified that he ended his employment relationship with LTL and Mr. McDougall due to the non-payment of monies for services he had provided, along with other stressors from working there, including Mr. McDougall’s verbal abuse. Mr. Kapoor, who had not been paid since mid-November, sent his resignation notice to Mr. McDougall on December 22, 2018 in the form of a text message. It stated that he was giving him 15 days’ notice of his resignation because the “payment is never on time [and I] always have to beg for money” while the “rates were very low”. He also stated that he was always repairing LTL’s trailers and paying for other drivers’ mistakes out of his own pocket. Mr. Kapoor noted that Mr. McDougall had promised to pay him for past work and suggested he may have forgotten to do so. Mr. Kapoor advised that he would, however, complete his last load and provide his miles to Mr. McDougall. He ended his resignation by stating: “Feeling so bad Bob, please tell me if [I’m] wrong any where OR did any damage or mistake on duty serving

you.” Mr. McDougall responded by text to Mr. Kapoor on the same day, stating: “Varun you have done very well, no dispute.”

[41] Mr. Kapoor picked up his final three loads in Quebec and Ontario and, prior to delivering them in Western Canada, he stopped at his home in Winnipeg on December 23, 2018. He advised Mr. McDougall that he wanted to take three days off to spend the Christmas holidays with his family before completing the delivery. However, Mr. McDougall refused to allow this and made arrangements for another driver, Kevin St. John – who was a witness at the hearing – to drive his own truck to Winnipeg and pick up the loaded LTL trailer. Mr. St. John confirmed that, when he picked up the trailer from Mr. Kapoor’s home in Winnipeg, the load was intact and in good condition. He testified that he brought the load to his property in Saskatchewan and that it was then picked up by someone else to be delivered to its destination.

[42] Mr. Kapoor provided a summary to the Tribunal indicating that he was owed \$30,500 for work he had done for LTL. In an email sent to Mr. Kapoor on January 13, 2019, Mr. McDougall acknowledged the monies owed to Mr. Kapoor, noting that the Lease Agreement said he had 60 days to pay Mr. Kapoor, so long as “nothing comes back as a charge” to Mr. Kapoor. Mr. McDougall said he would consider paying Mr. Kapoor earlier but needed to consult with his wife first. He also mentioned that he would finalize Mr. Kapoor’s December statement and send it to him.

[43] Mr. Kapoor testified that, shortly after he resigned, Mr. McDougall started to send him text messages and emails that included abusive, racist and discriminatory language. A number of these were entered into evidence during the hearing.

[44] In the same January 13, 2019 email to Mr. Kapoor, Mr. McDougall made the following statements:

- “[...] you held me hostage on loads that needed to be hauled, you were very rude most of the time as the others of your group all are. None of you have any idea what it costs to run a business, no idea at all, all of you being East Indians think the money I get for my percentage is all clear money in my pocket [...]”
- “[...] you didn’t give a damn if I lived or not, many times my bank account is empty due to driver error, being late and damaged freight and me never

getting paid because of this, did you care or give a damn, hell no, just like the rest of the East Indians, all for me and fuck you, don't care if you can eat or not as long as I am getting everything for free."

- "I spent hours looking for the best freight but even \$17,000 loads are not good enough for you Varun and your East Indian people, only your breed, nobody else as others are very happy to get such loads but the East Indians feel they are entitled [to] more and want to have everything for free I have learned over the past year and a half, my mistake for sure for ever hiring one in the first place, it has been daily stress like I have never experienced and major hurt for me where as the white drivers are very happy with what they make."

- "You East Indians need to work with each other, not others as your feeling of entitlement is more than being fair and unacceptable."

- "[...] I tried to help you many times for free in the hopes you would some day be grateful but it never happened, you just wanted and expected more and more, after all you guys are an entitled breed."

- "As for your trucks sitting I can only say that's your choice, I could give a damn less, the free [ride] is over obviously for now, maybe you should move back to your country and it will be a better life for you and your family, possibly this is the answer?"

[45] In a February 28, 2019 text message to Mr. Kapoor, Mr. McDougall stated:

- "[...] you fucked up and you and your brown assed friend you hit are both lying"
- "[...] maybe they will deport you along with your brown assed friend for insurance fraud"

[46] Mr. Kapoor responded to this text by stating: "Please don't threaten me." He testified that he felt this text from Mr. McDougall was discriminatory and that nobody should have to tolerate such language.

[47] In an April 27, 2019 text message, Mr. McDougall alleged that Mr. Kapoor had received many tickets that he had concealed and that these tickets had almost caused Mr. McDougall to lose his authority to operate, stating: "[A]ll you guys your colour are alike, exaggerate, lie and want money you don't have coming along with getting in accidents and then not wanting to settle them ...".

[48] In response to this text, Mr. Kapoor responded that Mr. McDougall was very racist. He denied getting any tickets that were not the fault of LTL, for example for carrying oversized loads with the wrong permit.

[49] When asked during the hearing about whether he had hit someone, as referenced in Mr. McDougall's text, Mr. Kapoor testified that there had been no accident, and that this was a lie made up by Mr. McDougall to avoid paying him what he was owed.

[50] On July 23, 2019 Mr. McDougall sent Mr. Kapoor an email in which he said:

Varun, I can only wish you would drop off the end of the earth, you are one trouble making whinny (*sic*) son of a bitch, after all I did for you and what you did to me getting ticket after ticket, constantly bitching and never completing loads, damaging freight you are a true waste of skin no matter your color, I am not racist as you are clearly trying to claim but I do not have any tolerance for ignorant stupid opportunist like yourself, you are one sorry piece of crap that wants a life of free living in Canada at the expense of others, your (*sic*) a liar and a trouble maker and I have grown to disrespect you more than anyone I know. If I was a racist you never would have been hired, bad move on my part for sure, you kept all your infractions from me knowing damn well you would have been fired guaranteed.

[51] All three of Mr. Kapoor's witnesses had also hauled loads for LTL under the direction of Mr. McDougall during periods that overlapped with Mr. Kapoor's employment. None of them worked for LTL at the time of the hearing. All of them were also owed money by LTL for work they had done.

[52] Harwinder Singh Sran, who is of South Asian descent like Mr. Kapoor, began working for LTL around the same time as Mr. Kapoor, in October of 2017. He owned two trucks. His experience with LTL was similar to Mr. Kapoor's in that he was initially paid on time, then the payments became late and stopped. He was also subjected to rude and discriminatory communications from Mr. Kapoor, both verbally and electronically, that he considered racist and that referenced his "brown skin" and "brown skin guys from India". He said this is why he quit working for LTL and found employment elsewhere.

[53] Mr. St. John testified that he met Mr. McDougall through a load board, which is a virtual bulletin board where companies and shippers can post loads that need to be delivered. He began transporting hay from Montana to Alberta for LTL, sometime around July of 2018. Mr. St. John owned four highway trucks and his own trailers, so he was in a different situation from Mr. Kapoor. He explained that, because he had his own license and authority to transport goods between Canada and the United States, he was not working for

LTL, but that LTL was simply one of his many customers, brokers and suppliers that he worked with. He did not have a contract or Lease Agreement with LTL, like Mr. Kapoor did.

[54] Mr. St. John testified that he met Mr. Kapoor when he went to Winnipeg on December 24, 2018 to pick up the load Mr. Kapoor had brought from Ontario and Quebec for LTL. He testified that Mr. McDougall's attitude was that he was "getting rid of" Mr. Kapoor because he had caused him "nothing but heartache and grief and cost him huge amounts of money." Mr. St. John testified that, when he spoke to Mr. McDougall about picking up the load from Mr. Kapoor, Mr. St. John found the conversation upsetting and disappointing, because Mr. McDougall was making "disparaging, slanderous and racist" comments about Mr. Kapoor, which Mr. St. John considered to be "dark and evil." He testified that Mr. McDougall had repeatedly called Mr. Kapoor a "sand [N-word]", and "one of those brown people who wear towels on their heads." Mr. St. John said that Mr. McDougall also referred to Mr. Kapoor being an immigrant, saying "they should all be rounded up and sent back to their home country". Finally, he said that Mr. McDougall made generalized comments about drivers from India saying that "any of the owner operators that I've had from there are all the same", referring to them as "wastes of skin."

[55] When he met Mr. Kapoor in Winnipeg on December 24, 2018, Mr. St. John said he found him to be an honest, hardworking man and "a very gentle and wonderful soul." He testified that, once he met Mr. Kapoor, he saw Mr. McDougall's true character and started to think there was something wrong with him since his description did not match the person he met. He also learned that Mr. Kapoor had not been paid for services he had completed for LTL. He found this to be troubling because he had been paid on time for loads he had delivered for LTL up to this point. After he met Mr. Kapoor, Mr. St. John said he began to distance himself from Mr. McDougall. He brought the trailer from Winnipeg to his property in Saskatchewan and someone else picked it up there, then he hauled one more load for LTL, for which he was never paid, and then he ceased working with LTL around January 3, 2019. He said he ended his working relationship with Mr. McDougall because of his false characterization of Mr. Kapoor and his use of racist comments about him.

[56] Mr. Kapoor's third witness, Karen Alexander, testified that she had signed a contract in 2018 to transport goods for LTL. She owned her own truck and hauled flat bed trailers

that belonged to LTL. Ms. Alexander had her own authority like Mr. St. John, so she could obtain her own permits. She did not need to rely on LTL to obtain them for her. She has known Mr. Kapoor for over 10 years, as they used to deliver goods in the North, driving the ice roads together. She testified that she heard Mr. McDougall refer to Mr. Kapoor and others from India as “black ass”, “brown ass” and “rag head”. She said Mr. Kapoor was a particular target of Mr. McDougall’s racist comments because he spoke up about problems at LTL.

[57] Ms. Alexander testified that Mr. McDougall did not pay her on time when she worked for LTL and that LTL also owes her money.

a) The Respondents treated Mr. Kapoor in an adverse differential manner

[58] The Commission argues that Mr. McDougall, as the owner and sole manager of LTL, treated Mr. Kapoor in an adverse differential manner in the course of employment in two ways: first, Mr. McDougall delayed and withheld monies owed to Mr. Kapoor for services he performed on behalf of LTL and, second, he subjected Mr. Kapoor to abusive and discriminatory language both during his employment and following his resignation. These comments directly related to his colour, race and national and ethnic origin.

[59] I agree that Mr. McDougall treated Mr. Kapoor in an adverse differential manner during the course of their employment relationship by withholding payment and through the use of discriminatory language.

b) Mr. Kapoor was an employee of LTL

[60] In order to determine whether Mr. Kapoor was discriminated against by the Respondents under section 7(b) of the CHRA, there must have been an employment relationship at the time the adverse treatment occurred. I must conclude that Mr. Kapoor was, for the purposes of this section of the CHRA, an employee.

[61] Mr. Kapoor’s evidence was that, in addition to filing a human rights complaint with the Commission, he had filed a complaint with the Labour Program under Part III of the *Canada Labour Code*, R.S.C., 1985, c.L-2 [CLC], to try to recover the money owed to him

by LTL. On September 19, 2019, he received a decision from the Labour Program advising that his complaint was rejected because “No employer/employee relationship exists between you and LTL Transport Ltd. as you are an independent contractor (owner operator).”

[62] I note that the Lease Agreement between Mr. Kapoor and LTL also states that, as Mr. Kapoor is an independent contractor, “no ‘employee-employer’ relationship exists between [Mr. Kapoor and LTL], therefore [Mr. Kapoor] is responsible for providing his own workman’s compensation insurance, employment and income taxes, etc.”

[63] The Commission argues that, despite the finding of the federal Labour Program and the wording of the Lease Agreement, Mr. Kapoor qualifies as an employee under the CHRA and has provided helpful submissions on this point.

[64] Section 25 of the CHRA defines “employment” as including “a contractual relationship with an individual for the provision of services personally by the individual”. This section has been considered by the Tribunal and by the Federal Court and Federal Court of Appeal.

[65] In *Canada (Attorney General) v Lapierre*, 2004 FC 612 [*Lapierre*] the Federal Court considered the definition of employment that was added to section 25 of the CHRA by Parliament in 1998, stating that the definition “is unambiguous: the word ‘employment’ includes, for the purposes of the CHRA, ‘a contractual relationship with an individual for the provision of services personally by the individual’” (para 31).

[66] The Tribunal has further considered the section 25 definition of employment, concluding that the contract implied in the definition “must be with an individual” rather than a corporation, and that the contract must be “for the provision of services (rather than goods) and that the services were provided by the individual party to the contract” (*Fick v Loomis Express*, 2022 CHRT 2 [*Fick*] at para 78). As the Tribunal observed in *Fick* at para 79, the “ultimate question to determine whether there is an employment relationship in a human rights context is whether there is ‘control exercised by an employer over working conditions and remuneration, and corresponding dependency on the part of a worker’” (citing *McCormick v Fasken Martineau DuMoulin LLP*, 2014 SCC 39 at para 23 [*McCormick*]).

[67] Although considering British Columbia's human rights legislation, the Supreme Court of Canada in *McCormick* stated that "jurisprudence confirms that there should be an expansive approach to the definition of 'employment'" (para 22). The Supreme Court went on to note, for example, that independent contractors "have been found to be employees for purposes of human rights legislation, even though they would not be considered employees in other legal contexts", including in the Federal context (para 22; referring to, among other cases, *Canadian Pacific Ltd. v Canada (Human Rights Commission)*, 1990 CanLII 12536 (FCA)).

[68] In *Fick*, the complainant had similarly filed a complaint under the CLC, alleging in his case unjust dismissal from his employment. An arbitrator determined that Mr. Fick was not an employee within the meaning of the CLC and therefore lacked the jurisdiction to hear the complaint of unjust dismissal. That decision was ultimately upheld by the Federal Court of Appeal.

[69] The Tribunal in *Fick* determined that it could still decide whether Mr. Fick was an employee pursuant to the CHRA because the definition of employee is different in each of these two legislative schemes. The Tribunal also considered the well-known principle that decision makers should give a broad, liberal and purposive interpretation to the CHRA in order to "advance policy goals underlying quasi-constitutional human rights statutes to make human rights legislation procedurally practical and accessible" (*Fick* at para 90, referring to *McCormick*).

[70] While the Tribunal in *Fick* did not find the complainant to be an employee for the purposes of section 7 of the CHRA, it noted that determining whether an individual is an employee under the CHRA is a "highly fact specific examination" (para 81). The Tribunal set out certain factors, originally established by the Federal Court of Appeal in *Canada (Attorney General) v Rosin*, 1990 CanLII 12957 (FCA) [*Rosin*], that can help to determine if there is an employment relationship, including: (1) whether there is a situation of control, (2) whether there is some remuneration, and (3) whether the alleged employer derived some benefit from the work performed (para 79, see also *Lapierre* at para 41). The existence of a contract is another factor to consider, although this is not determinative.

[71] In the present case, Mr. Kapoor signed a contract with LTL, the “Owner Operator Lease Agreement”. The Commission argues that the relationship between Mr. Kapoor and the Respondents, set out in the Lease Agreement, meets the criteria established by the Federal Court of Appeal in *Rosin*, namely: (1) there was a situation of control exercised by LTL over Mr. Kapoor, further demonstrated by the fact that he was only allowed to haul loads for LTL during his period of employment; (2) Mr. Kapoor was remunerated by LTL for the services rendered; and, (3) LTL derived some benefit from Mr. Kapoor’s work, further demonstrated by the length of the Lease Agreement (for one year, rather than simply one load or on an *ad hoc* basis).

[72] The Commission notes that, while the *Fick* case involves some similar facts to Mr. Kapoor’s as it relates to the trucking context, it can be distinguished from the present case for several reasons. It argues that, unlike the situation in *Fick*, Mr. Kapoor was employed under his Lease Agreement with LTL as an owner-operator. The Lease Agreement was with Mr. Kapoor personally, as an individual, rather than as an incorporated business. The agreement between LTL and Mr. Kapoor was for the provision of services, not goods, and the services were provided by Mr. Kapoor as a party to the contract.

[73] Finally, unlike the situation in *Fick*, Mr. Kapoor was bound to exclusively provide services for LTL and could not deliver for other customers. He was also required to display LTL’s name on his truck.

[74] The Commission argues that all these factors point to a high degree of dependence and vulnerability, the very situation the CHRA exists to protect. As such, it submits that Mr. Kapoor is not the type of independent businessperson that is excluded from the CHRA’s protection, as contemplated in *Fick*.

[75] I agree with the Commission that the particular facts of this case establish that Mr. Kapoor’s relationship with the Respondents falls within the definition of employment in section 25 of the CHRA. The Lease Agreement he signed resulted in him being in a contractual relationship with LTL for the provision of services personally by him, and he was required to work exclusively for LTL during this time. I accept that, for the period during which the Lease Agreement was in effect (including the 15 days after he gave notice of the

termination of the Lease Agreement, which he provided on December 22, 2018), he was an employee of the Respondents pursuant to section 7(b) of the CHRA.

c) The Respondents were acting in the course of employment at the time of the adverse differential treatment

[76] The evidence establishes that, when Mr. Kapoor sought payment from Mr. McDougall for the work he performed for LTL, Mr. McDougall responded to Mr. Kapoor with unquestionably racist language. I find that this occurred both before and after Mr. Kapoor gave his notice of termination of the Lease Agreement. Throughout the period that he withheld Mr. Kapoor's payment and used derogatory and racist language towards him, both verbally and in writing, Mr. McDougall was representing LTL and engaged in his role as its owner and sole manager.

(iv) Mr. Kapoor's race, colour and national and ethnic origin were factors in the adverse differential treatment he experienced

[77] To prove the third element of the *prima facie* discrimination test, Mr. Kapoor must show that there is a connection between the first two elements. The protected characteristic(s) need not be the only factor that led to the adverse treatment and a causal connection is not required (*First Nations Child and Family Caring Society of Canada v Attorney General of Canada (for the Minister of Indian and Northern Affairs Canada)*, 2016 CHRT 2 at para 25).

[78] The Tribunal has acknowledged many times that proving discrimination by way of direct evidence is often difficult, as overt discrimination is rare. Section 7(b) of the CHRA recognizes that adverse differential treatment based on a prohibited ground of discrimination may happen directly or indirectly. The Tribunal's role is to examine all of the evidence to determine if there exists a "subtle scent" of discrimination (*Basi v Canadian National Railway*, 1988 CanLII 108 (CHRT) [*Basi*]). In cases involving circumstantial evidence of discrimination, the Tribunal may draw an inference of discrimination where the supporting evidence makes that inference more likely than other possible explanations or hypotheses (*Basi*).

[79] In the present case, there is a substantial amount of direct evidence of racist communication by Mr. McDougall towards Mr. Kapoor, in the form of emails and text messages. This is a case where the offensive conduct, at least following the termination of the Lease Agreement, is glaringly obvious. It seems apparent that the Commission should likely have referred this complaint to the Tribunal on the basis of section 14(1)(c) of the CHRA, if not instead of, then at least in addition to, section 7(b), as it has done in other cases. The Tribunal has previously concluded that harassment on a prohibited ground of discrimination that occurs following the end of one's employment, but that is still related to the previous employment, constitutes a discriminatory practice under section 14(1)(c) (in *Duverger v 2553-4330 Québec Inc. (Aéropro)*, 2019 CHRT 18).

[80] However, while Mr. McDougall's written racist comments to Mr. Kapoor were made following the end of his employment with LTL, I accept that Mr. Kapoor's race, colour, national origin and ethnic origin were factors in the adverse differentiation he experienced during his employment. This includes Mr. McDougall's use of discriminatory language in reference to Mr. Kapoor, and his failure to pay him on time, or at all, for the work he performed for LTL. The evidence renders this inference more probable than not.

[81] Mr. Kapoor testified that Mr. McDougall used discriminatory language towards him during his employment as part of the "rough talk" directed at him when he would request payment or lodge complaints about work-related issues. I accept Mr. Kapoor's evidence that this occurred. The evidence supports a finding that it is more likely than not that this occurred, given Mr. McDougall's ongoing racist comments following Mr. Kapoor's termination of the Lease Agreement, and the evidence from Mr. Kapoor's witnesses that Mr. McDougall made racist comments about him and others from India during his employment with LTL.

[82] Each time Mr. Kapoor inquired about being paid or challenged Mr. McDougall in any way following the termination of the Lease Agreement, Mr. McDougall reacted in writing in a rather vicious manner, even threatening to sue Mr. Kapoor for damaging a trailer that, according to the evidence before the Tribunal, Mr. Kapoor did not damage. His written communications with Mr. Kapoor contain explicit and egregiously racist language that reference Mr. Kapoor's race, colour, ethnic origin and national origin.

[83] Ms. Alexander's evidence also supports the inference that Mr. Kapoor's protected grounds were factors in Mr. McDougall's adverse treatment of Mr. Kapoor during his employment with LTL. She testified that, while Mr. McDougall had a bad attitude about people from India and that he made racist comments about other South Asian drivers to her, he focussed on Mr. Kapoor, because he would speak up about problems at LTL, which Mr. McDougall did not like. She confirmed Mr. Kapoor's evidence about Mr. McDougall blaming drivers like Mr. Kapoor for damaging his trailers, when in fact they were poorly maintained by him, and that he provided fake or photocopied permits to drivers, which could get them in trouble with provincial governments. Ms. Alexander testified that he made racist comments about Mr. Kapoor and other drivers from India, calling them "rag head", "brown ass" and "black ass."

[84] Mr. Sran confirmed that Mr. McDougall made similar racist comments to him and about other drivers from India during the period Mr. Kapoor worked for LTL. Mr. St. John also testified about the vile and racist names that Mr. McDougall used to describe Mr. Kapoor when he asked him to pick up the trailer from Mr. Kapoor in Winnipeg in December of 2018.

[85] I accept that the comments Mr. McDougall made about Mr. Kapoor to Ms. Alexander and Mr. St. John, which were directly linked to his colour, race, and national and ethnic origin, occurred while Mr. Kapoor was still an employee of LTL. The racist comments were made by Mr. McDougall to Mr. St. John within a day or two after Mr. Kapoor provided 15 days' notice of terminating the Lease Agreement on December 22, 2018, when Mr. McDougall engaged Mr. St. John to pick up the trailer in Winnipeg. They constitute evidence that Mr. McDougall differentiated adversely in relation to his employee, Mr. Kapoor, on the basis of prohibited grounds of discrimination, even if Mr. Kapoor was not present to hear the comments being made about him.

[86] In considering the racist remarks made by Mr. McDougall to others about Mr. Kapoor during his employment with LTL, as well as the racist comments made directly to Mr. Kapoor following the termination of the Lease Agreement (when seeking payment for services rendered during his employment), it is reasonable to infer that Mr. McDougall made similar racist comments to Mr. Kapoor during his employment, when he would raise issues such as

delayed payments or trailer repairs or problems with permits. I find that it is more likely than not that the “rough talk” Mr. McDougall engaged in during Mr. Kapoor’s employment included language that referenced Mr. Kapoor’s race, colour, and national and ethnic origin, and so was discriminatory.

[87] With regard to Mr. McDougall’s delay or failure to pay Mr. Kapoor during his employment with LTL, I note that all of Mr. Kapoor’s witnesses testified that they were also owed money by Mr. McDougall. Mr. Sran, who is also originally from India, testified that he was owed a significant amount of money by LTL (over \$80,000), and that Mr. McDougall used similar racist language towards him. Both Mr. St. John and Ms. Alexander, neither of whom are South Asian, testified that they were also owed money by Mr. McDougall, although not as much as is owed to Mr. Sran and Mr. Kapoor.

[88] I agree with the Commission that the fact that Mr. St. John and Ms. Alexander, two “white” individuals, were also owed money by LTL does not mean that the withholding of Mr. Kapoor’s payment was not racially motivated. One can engage in poor business practices while also being motivated, consciously or unconsciously, by discriminatory factors. Indeed, human rights legislation is not concerned with the motives or intentions of those who discriminate, but rather with the effect of the discrimination on the victim.

[89] Mr. Kapoor’s requests to be paid by Mr. McDougall after he gave 15 days’ notice of termination of the Lease Agreement were responded to by Mr. McDougall in writing with comments that were highly offensive, referencing his colour (for e.g. “brown ass” and “your colour”), his national and ethnic origin (e.g. “you should move back to your country”, “being East Indian” and “your breed”) and broad stereotypical and racist comments about “East Indians”. However, Mr. McDougall also acknowledged owing Mr. Kapoor payment for work he had done, noting that he had 60 days following the end of the Lease Agreement to pay him.

[90] I find it more likely than not that Mr. McDougall’s racist attitude in relation to Mr. Kapoor’s request for payment following the end of the Lease Agreement was present and affected his decision to delay or deny payment to Mr. Kapoor during his employment with LTL. I accept that Mr. Kapoor’s race, colour, and national and ethnic origin were all factors

in Mr. McDougall's delays and failure to pay him for the services he performed pursuant to his Lease Agreement with LTL, both during and following his employment.

d) Conclusion: Mr. Kapoor has established that he was discriminated against by the Respondents

[91] Mr. Kapoor has established that the prohibited grounds of discrimination, being his race, colour, ethnic origin, and national origin, were factors in the adverse differential treatment that the Respondents engaged in in relation to him, an employee of LTL. The evidence presented at the hearing leads me to conclude, on a balance of probabilities, that Mr. Kapoor has established a *prima facie* case of discrimination.

[92] Respondents may present evidence to refute an allegation of *prima facie* discrimination, they may put forward a defence justifying the discrimination under section 15 of the CHRA, or they may do both (*Bombardier* at para 64). While Mr. McDougall did file a Statement of Particulars and replies on behalf of LTL during the pre-hearing proceedings, he focused his defence on challenging the human rights process, denying that he is racist, and accusing Mr. Kapoor of having committed multiple highway infractions. He claimed these violations nearly caused LTL to lose its travel authority and that Mr. Kapoor had damaged LTL's trailers and other equipment. The Respondents did not participate in the hearing and, as a result, did not submit any evidence to support these claims or put forth an alternative non-discriminatory explanation for the *prima facie* discriminatory conduct.

[93] The Tribunal must rely on the evidence presented at the hearing in determining whether discrimination occurred and, in this case, the evidence clearly establishes that the Respondents discriminated against Mr. Kapoor, contrary to section 7(b) of the CHRA on the basis of his race, colour, national origin and ethnic origin.

B. Issue 2: Mr. Kapoor is entitled to the following remedies

[94] Section 53(2) of the CHRA states that if, at the conclusion of the inquiry the Tribunal finds that the complaint is substantiated, the Tribunal may make an order against the person found to have engaged in the discriminatory practice. In this case I have found that Mr.

McDougall, as the owner and sole manager of LTL, engaged in a discriminatory practice under section 7 of the CHRA.

[95] The purpose of a remedial order under the CHRA is not to punish the respondent, but to make the complainant whole – i.e. to return them to the position they would have been in had the discrimination not occurred (*Hughes v Canada (Attorney General)*, 2019 FC 1026 [Hughes] at para 36). The Tribunal also has an interest in eliminating and preventing discrimination by crafting remedies designed to educate individuals about the rights protected by the CHRA.

[96] The Tribunal's broad remedial discretion is to be exercised on a reasonable and principled basis, considering the circumstances of the case, the evidence presented at hearing, and the link between the discriminatory practice and the losses claimed (*Tanner v Gambler First Nation*, 2015 CHRT 19 at para 161).

(i) Damages for pain and suffering

[97] The Tribunal may award up to \$20,000 for pain and suffering experienced as a result of a discriminatory practice (section 53(2)(e) of the CHRA). Mr. Kapoor asks the Tribunal to award the maximum amount for his pain and suffering and the Commission submits that Mr. Kapoor should receive compensation at or near the maximum amount of \$20,000. The Commission argues that the overt, explicit and sustained nature of the abusive, racist and discriminatory comments Mr. McDougall made to Mr. Kapoor, including by text and email, as well as the fact that he made similar remarks about him to third parties, such as Mr. St. John and Ms. Alexander, something rarely seen in the Tribunal's jurisprudence, justifies an award on the high end of the scale.

[98] Mr. Kapoor testified that Mr. McDougall's racist comments made him feel very bad, deeply hurt and insulted. He testified that Mr. McDougall's language hurt his feelings and made him feel dehumanized. He felt upset, disturbed and stressed. He said he was off work for a long time after his experience with LTL, due to the stress caused by the way Mr. McDougall had treated him. He said that in the year after ending his employment relationship with LTL, he experienced depression and high blood pressure and required medication,

whereas prior to this he had never had any health issues and was always a very healthy person. Mr. Kapoor submitted medical records as evidence of the impact that the discrimination had on his health, including insomnia and anxiety.

[99] Mr. Kapoor stated that nobody should have to tolerate the type of language that Mr. McDougall used towards him. He testified that, as an immigrant, he is always afraid of being kicked out of Canada. Therefore, having someone threaten him with deportation left him feeling very small, inferior and insecure. By insecure, I understood him to mean he felt unsafe. He testified that he has worked very hard since coming to Canada, that he came here for a better life for his family and that, being the recipient of these comments from Mr. McDougall, who was born in Canada, made him feel insecure, angry, hurt and afraid.

[100] Damages for pain and suffering are meant to compensate complainants, to the extent possible, for the harm and the hardship they have endured as a result of the discrimination, including any injury to their dignity (*Young v Via Rail Canada Inc.*, 2023 CHRT 25 [*Young*] at para 308). The Tribunal has stated many times that the maximum award of \$20,000 tends to be reserved for the most blatant or egregious discrimination (*Young* at para 307). There must also be a causal connection between the damages claimed and the discriminatory practice (*Chopra v Canada (Attorney General)*, 2007 FCA 268 at para 32).

[101] The Tribunal has accepted that, in awarding damages for pain and suffering, it is appropriate to consider both the objective seriousness of the conduct and the effect on the particular applicant who experienced the discrimination (*Christoforou v John Grant Haulage Ltd.*, 2021 CHRT 15 [*Christoforou*] at para 104, relying on *Arunachalam v Best Buy Canada*, 2010 HRTO 1880 at para 52 and *Sanford v Koop*, 2005 HRTO 53 at para 35).

[102] I accept that Mr. Kapoor experienced pain and suffering as a result of the discrimination he faced. In terms of the objective seriousness of the conduct, I have considered the nature of the discrimination faced by Mr. Kapoor, which consisted mainly of racist comments made verbally and in writing when he raised issues with his work conditions, including not receiving payment for work he had done for LTL. It is difficult to imagine more harmful comments being made to someone that relate to their identity. Mr. McDougall made vile and racist comments that went to the core of Mr. Kapoor's identity as

an immigrant to Canada, someone who came from India in order to provide a better life for his family and worked hard to do so. Mr. McDougall made Mr. Kapoor feel unsafe by suggesting that he should be deported, something Mr. Kapoor testified can be used against immigrants to make them feel less secure in Canada, despite being here legally.

[103] Mr. Kapoor testified that Mr. McDougall's treatment of him, which included a failure to pay him, resulted in him deciding to terminate the Lease Agreement, which is a very serious outcome, given that this was his only source of income to support himself and his family at the time.

[104] When considering the effect on Mr. Kapoor, I have also considered his social context or vulnerability (*Bilac v Abbey, Currie and NC Tractor Services Inc.*, 2023 CHRT 43 at para 147, referring to *Torres v Royalty Kitchenware Ltd.*, 1982 CanLII 4886 (ON HRT); *Gichuru v Law Society of British Columbia (No. 2)*, 2011 BCHRT 185 (CanLII) (aff'd 2014 BCCA 396) at para 260). In this case, Mr. Kapoor's vulnerability arises from his status as an immigrant and a racialized person. He testified about the fear and anxiety caused by Mr. McDougall suggesting he should be deported, and how such language can be used to intimidate immigrants to Canada.

[105] Mr. Kapoor filed his complaint on the basis of not only his national origin, as an immigrant to Canada from India, but also his race, his colour, and his ethnic origin. The CHRA anticipates that prohibited grounds may overlap or intersect with one another. Section 3.1 of the CHRA states that "a discriminatory practice includes a practice based on one or more prohibited grounds of discrimination or on the effect of a combination of prohibited grounds." The Federal Court of Appeal has referred to this section as addressing "intersecting" grounds of discrimination or "compound discrimination" (*Turner v Canada (Attorney General)*, 2012 FCA 159 [*Turner*] at para 48; *Jagadeesh v. Canadian Imperial Bank of Commerce*, 2024 FCA 172 [*Jagadeesh*] at para 80).

[106] In *Turner*, the Court of Appeal recognized that, in some cases, analyzing multiple listed grounds separately can minimize what is, in fact, compound discrimination, as "each ground may not justify individually a finding of discrimination, but when the grounds are considered together, another picture may emerge" (para 48). The Court noted that an

analysis of the prohibited grounds must not ignore “the possibility that compound discrimination may have occurred as a result of the intersection of” multiple grounds (para 49).

[107] Similarly, in *Jagadeesh*, the Federal Court of Appeal warned against considering prohibited grounds in silos, stating that the concept of intersecting or compound grounds of discrimination “is based on the recognition that where multiple grounds of discrimination are present, their combined effect may be more than the sum of their individual effects” (para 80).

[108] In its “Discussion paper on systemic racism”, the Commission states that, “applying an **intersectional approach** means taking into account that a person has more than one social category or identity, and that their experiences and lives are influenced by those other categories or identities.” The Commission says that “**Intersectionality** is a concept that recognizes that different kinds of discrimination reinforce and influence each other. The various identities a person identifies with, such as their race, class, gender, physical or mental ability, or sexual orientation, can shape the nature of the discrimination they face in their lives” [Emphasis in original].

[109] Mr. Kapoor experienced discrimination on the basis of his race, colour, national origin and ethnic origin. These grounds intersect with one another to make up Mr. Kapoor’s identity as an immigrant and racialized person, and they compound the effect of the discrimination he experienced as Mr. McDougall’s comments attacked many aspects of his identity, while also relying on racist stereotypes.

[110] In *André v Matimekush-Lac John Nation Innu*, 2021 CHRT 8 [André] where the Tribunal awarded \$17,000 for pain and suffering, the complainant submitted medical documents and psychologists’ reports that included diagnoses of adjustment disorder, generalized anxiety and post-traumatic stress disorder. The reports substantiated the effects of the discrimination and harassment on her life. Ms. André’s symptoms included distress, sadness, recurring fatigue, loss of appetite, insomnia, hopelessness and even suicidal thoughts (at paras 177-178).

[111] Although medical evidence is not required to establish pain and suffering, in the present case, Mr. Kapoor did provide medical evidence to support the impact of the discrimination on his health. I accept his evidence that the impact of the discrimination on him was very serious and the impact on his physical and mental health, family life, dignity and his financial situation all caused him pain and suffering. Considering the nature of the discrimination, Mr. Kapoor's social context and vulnerability, and the impact of the discrimination on him given the intersecting grounds of discrimination, I find that an award at the highest end of the scale is warranted and appropriate.

[112] Mr. Kapoor is entitled to \$20,000 for pain and suffering.

(ii) Special compensation for wilful or reckless discrimination

[113] The Tribunal may also award up to \$20,000 if it determines that the Respondents engaged in the discriminatory practice wilfully or recklessly (section 53(3)) of the CHRA). Mr. Kapoor is claiming the maximum amount of \$20,000 under subsection 53(3) of the CHRA. The Commission supports this request, in light of the fact that Mr. McDougall made these comments to third parties, as well as to Mr. Kapoor himself. The Commission argues that his comments were more than likely wilful given the repetitive and deliberate way they were made. It submits that this type of egregious behaviour, namely the explicit discriminatory and racist remarks that Mr. Kapoor was subjected to, is something rarely seen in the jurisprudence under the CHRA.

[114] The Federal Court has interpreted subsection 53(3) as a "punitive provision intended to provide a deterrent and discourage those who deliberately discriminate" (*Canada (Attorney General) v Johnstone*, 2013 FC 113 at para 155, aff'd 2014 FCA 110 [*Johnstone*]). Willfulness requires a finding that "the discriminatory act and the infringement of the person's rights under the Act is intentional", whereas recklessness usually involves "acts that disregard or show indifference for the consequences such that the conduct is done wantonly or heedlessly" (*Johnstone* at para 155).

[115] When deciding whether or not to award special compensation, the Tribunal is to analyze the respondent's actions, not the effects of those actions on the victim (*Beattie and*

Bangloy v Indigenous and Northern Affairs Canada, 2019 CHRT 45 at paragraph 210, aff'd 2021 FCA 245).

[116] I accept that Mr. McDougall's discriminatory behaviour was intentional, and therefore conclude he acted wilfully, and also that he was reckless in his behaviour. His willingness to put his comments in writing and to make them not just to Mr. Kapoor but to others as well shows a clear disregard for the consequences of his behaviour or its impact on others. He also stopped paying his employee Mr. Kapoor on time, and eventually at all, despite having a contract with him and acknowledging that the money was owed. He knew that he was denying his employee his ability to earn a living to support himself and his family. I have concluded that Mr. Kapoor's protected grounds were a factor in Mr. McDougall's decision to not pay him, making his actions discriminatory.

[117] In both *Young* and *André*, the employers were aware of the deteriorating situation between the complainants and the individuals who were harassing them and did not act appropriately to step in and resolve situations that were toxic and harmful to the complainants. In Mr. Kapoor's case, Mr. McDougall was both the owner of LTL and his supervisor. He owed a duty to his employee to protect him from workplace discrimination. When Mr. Kapoor explicitly told Mr. McDougall that he was being racist, Mr. McDougall responded by doubling down on his racist comments to Mr. Kapoor.

[118] The facts in the present case do show that Mr. McDougall's conduct was of such a nature as to warrant an award of special damages at the highest end of the range, as requested by Mr. Kapoor and the Commission.

[119] Mr. Kapoor is entitled to \$20,000 for the wilful and reckless discrimination he experienced.

(iii) Lost wages

[120] The Tribunal can compensate a complainant for some or all of the wages they were deprived of as a result of the discriminatory practice, pursuant to subsection 53(2)(c) of the CHRA. Mr. Kapoor has asked the Tribunal to order the Respondents to pay him \$30,500,

which is the amount he is owed for the work he did pursuant to his Lease Agreement with LTL.

[121] In its closing submissions, the Commission notes that, rather than seeking lost wages for a period subsequent to his resignation from LTL, Mr. Kapoor is only claiming \$30,500 for monies owed to him for services rendered during his period of employment.

[122] When an employee is terminated from their employment for a discriminatory reason, the purpose of compensation is to place the employee in a position they would have been in, but for the discrimination. The “quantum of such loss is determined by assessing the circumstances of each case, but there must always be a causal connection between the discrimination and the loss of income” (*Hughes* at para 37). The onus is on the complainant to show and establish this connection (*André* at para 126).

[123] The Tribunal must exercise its discretion to award lost wages on a principled basis and the time during which a causal connection exists is a matter to be determined by the Tribunal considering the facts of the particular case (*Abadi v TST Overland Express*, 2023 CHRT 30 at para 250). In doing so, the Tribunal must rely on the evidence presented at the hearing.

[124] I have concluded that there was a connection between Mr. Kapoor’s race, colour, national origin and ethnic origin and the adverse differentiation he experienced during the course of his employment, including Mr. McDougall withholding payment of what he was owed. The Tribunal received evidence that Mr. McDougall owed Mr. Kapoor \$30,500 for the work he completed while employed with LTL and evidence that Mr. McDougall accepted that money was owed to Mr. Kapoor for work he had done. I accept that he is owed \$30,500 by the Respondents and that he was deprived of this amount as a result of the discrimination under s.7(b) of the CHRA.

[125] The Respondents are ordered to pay Mr. Kapoor \$30,500 in lost wages. During the pre-hearing proceedings, the Tribunal heard that LTL may no longer be operating. In an email dated October 25, 2022 from Mr. McDougall to the Commission’s legal counsel, which was provided to the Tribunal as part of the motion to add Mr. McDougall as an individual Respondent, Mr. McDougall stated that “there is no LTL ... anymore, it went out of business

a few years ago”. He stated that LTL was “closed, shut down, zero assets”. The Tribunal accepted that it was necessary to add Mr. McDougall as a Respondent to this complaint in order to properly dispose of the complaint, stating “if LTL Transport Ltd. is no longer operational, then the only effective avenue left for Mr. Kapoor to pursue his claim is against Mr. McDougall” (2024 CHRT 88 at para 27).

[126] The Respondents LTL and Mr. McDougall are jointly and severally liable for all monetary compensation ordered.

(iv)Public interest remedies

[127] The Commission notes that, pursuant to section 53(2)(a) of the CHRA, the Tribunal has the discretion to make remedial orders. It submits that, if the Tribunal finds an infringement of the CHRA in this case, I should order two public interest remedies. The first is to order the Respondents to “cease and desist from continuing to commit the discriminatory practice identified by the Tribunal.” The second is to order Mr. McDougall to “take human rights sensitivity training from an independent third party with expertise addressing racism in the workplace” in order to redress the discriminatory practices and to prevent future discrimination.

[128] Aside from compensating victims of discrimination, the Tribunal’s authority to order remedies serves another important societal goal: “preventing discrimination and acting as a deterrent and an educational tool” (*Christoforou* at para 119). I agree that both proposed public interest remedies could help to prevent future acts of discrimination by the Respondents by ensuring compliance with the CHRA, especially given their lack of participation in the Tribunal’s process and their position that Mr. McDougall’s communications with Mr. Kapoor were not racist.

[129] It is unclear whether LTL exists anymore and therefore whether Mr. McDougall is operating this or any other business. However, I will order that, if Mr. McDougall is still operating LTL, he is to cease and desist from continuing to commit the discriminatory practice identified by the Tribunal, being the use of racist language and the discriminatory withholding of employee payments. I will also order that, if he is still operating LTL, Mr.

McDougall is to take human rights sensitivity training from an independent third party with expertise addressing racism in the workplace within one year of the date of this Decision, and to provide proof of having completed such training to the Commission within one month of completing the training.

VII. Order

[130] The Respondents, LTL Transport Ltd. and Robert McDougall, are ordered to pay to Mr. Kapoor the following amounts:

- a. \$20,000 for pain and suffering experienced as a result of the discriminatory practice;
- b. \$20,000 for wilful and reckless discrimination;
- c. \$30,500 in compensation for lost wages.

[131] The Respondents, LTL Transport Ltd. and Robert McDougall, are jointly and severally liable to pay the above ordered amounts.

[132] If Mr. McDougall is still operating LTL Transport Ltd., he is to cease and desist from continuing to commit the discriminatory practice identified by the Tribunal, being the use of racist language and the discriminatory withholding of employee payments.

[133] If Mr. McDougall is still operating LTL Transport Ltd., he is to take human rights sensitivity training from an independent third party with expertise addressing racism in the workplace within one year of the date of this Decision, and to provide proof of having completed such training to the Commission within one month of completing such training.

Signed by

Colleen Harrington
Tribunal Member

Ottawa, Ontario
July 18, 2025

Canadian Human Rights Tribunal

Parties of Record

File No.: HR-DP-2871-22

Style of Cause: Varun Kapoor v. LTL Transport Ltd. and Robert McDougall

Decision of the Tribunal Dated: July 18, 2025

Date and Place of Hearing: July 8, 9, 2024

By Zoom

Appearances:

Varun Kapoor, for himself

Jonathan Bujeau, for the Canadian Human Rights Commission

No one appearing for the Respondents