

**Canadian Human  
Rights Tribunal**



**Tribunal canadien  
des droits de la personne**

**Citation:** 2025 CHRT 97

**Date:** September 25, 2025

**File No(s):** HR-DP-2903-22

**Between:**

**The Estate of Edward Peters**

**Complainant**

**- and -**

**Canadian Human Rights Commission**

**Commission**

**- and -**

**Peters First Nation**

**Respondent**

**Decision**

**Member:** Athanasios Hadjis

## Table of Contents

I.	OVERVIEW.....	1
II.	DECISION.....	2
III.	ISSUES.....	3
IV.	LEGAL FRAMEWORK .....	3
V.	BACKGROUND TO THE COMPLAINT'S ALLEGATIONS .....	6
	A. Family groupings within PFN .....	6
	B. PFN land and housing .....	7
	C. Mr. Ed's house .....	7
	D. Treatment of Mr. Ed at a PFN meeting .....	8
	E. The Seabird Settlement and distribution entitlements .....	9
	F. Credibility of witnesses.....	9
VI.	ANALYSIS .....	10
	A. Grounds of discrimination .....	10
	(i) Family status.....	10
	(ii) Age.....	12
	(iii) Disability.....	12
	B. Adverse impact .....	13
	(i) Home build.....	13
	(ii) Treatment at the membership meeting.....	24
	(iii) The Seabird Settlement distributions .....	30
	C. Remedies.....	38
VII.	ORDER .....	40

## I. OVERVIEW

[1] Edward Peters, who was known throughout his community as “Mr. Ed”, filed this complaint with the Canadian Human Rights Commission (the “Commission”) in January 2019. Unfortunately, Mr. Ed passed away on August 18, 2019, and his estate, the Estate of Edward Peters (the “Estate”), is now the complainant in this case.

[2] Mr. Ed was a member of the Respondent, Peters First Nation (PFN). He alleged in his complaint that PFN did not adequately assist him and denied his requests for a new home build after his house was destroyed by a fire. He also claimed PFN removed him from a PFN members meeting. Mr. Ed maintained that PFN’s actions amounted to discrimination against him because of the family grouping that he belonged to (i.e., his family status) as well as his age (76 years old at the time of the complaint) and disability (alcohol dependency).

[3] On December 28, 2023, I issued a ruling (2023 CHRT 58) allowing the Estate to amend the complaint to allege that PFN denied the Estate payment of monetary distributions from a settlement PFN had reached with the Government of Canada (“Canada”) as ongoing discrimination and in retaliation to the complaint.

[4] PFN denies all the allegations.

[5] The complaint referred to several other alleged incidents of discrimination, but the Estate confirmed during the pre-hearing process that it was not seeking any finding relating to them.

[6] Many of the individuals involved in this case have the same last name, Peters. I therefore refer to most persons by their first names. The Estate was represented at the hearing by Darryl G. Kipp, who is the common-law spouse of Mr. Ed’s niece, Samantha Peters (Samantha). Mr. Kipp also testified. PFN and the Commission were represented by legal counsel.

[7] The Federal Court recently remarked in *Key First Nation v. Cote*, 2025 FC 1329 at paras 6–7 [*Key First Nation*], about the use of certain terminology. The Court observed the following:

[6] A brief note on the terminology used in these reasons. The terms “Indian” and “Aboriginal” appear in the *Constitution Act, 1982* and in many other pieces of Canadian legislation, policy, and jurisprudence that are relevant to the issues in this application. The terms “band” and “council of the band” appear in the *Indian Act* and the [*First Nations Elections Act*], as well as their respective regulations, to describe the elected governing body of a First Nation.

[7] I acknowledge that the terms “Indigenous,” “First Nation,” “Métis,” and “Inuit,” as appropriate, have supplanted the use of the earlier terms referenced above. I also acknowledge that is not the contemporary terminology used. Where these reasons reference specific legislation, policy, or jurisprudence, the terminology from those sources is used. I do not intend any disrespect by my use of such terminology.

[8] This case involves similar terminology, and I have adopted the same approach as the Court in *Key First Nation*. I also intend no disrespect.

[9] This case’s hearing lasted for 10 days, and extensive evidence was entered about matters that occurred decades ago to provide context. I have considered all the evidence, but I refer in my reasons solely to the evidence that is ultimately relevant to the issues before me.

## II. DECISION

[10] For the following reasons, I find that the complaint has been substantiated in part. The Estate did not establish that Mr. Ed was discriminated against when seeking assistance for a home build or by being removed from a membership meeting. PFN’s exclusion of the Estate from a \$200,000 per capita distribution from the settlement with Canada was also not a discriminatory practice. PFN authorized that per capita distribution after Mr. Ed’s death. I do, however, find that Mr. Ed was retaliated against when PFN refused to pay the Estate three payments of \$3,000 each. These payments, which also flowed from the settlement with Canada, were authorized by Band Council Resolution (BCR) on May 10, 2019, when Mr. Ed was alive.

### III. ISSUES

[11] The issues are the following:

- 1) Did PFN discriminate against Mr. Ed in relation to the provision of a service contrary to s. 5 of the *Canadian Human Rights Act*, R.S.C., 1985, c. H-6 (CHRA)
  - i. by engaging in adverse differentiation and denying him access to services for a home build based on a prohibited ground of discrimination?
  - ii. by removing him from a PFN members' meeting based on a prohibited ground of discrimination?
  - iii. by not providing the Estate with entitlements that were provided to other PFN members, based on prohibited grounds of discrimination?
- 2) Did PFN discriminate against Mr. Ed in the provision of residential accommodation by engaging in adverse differentiation based on a prohibited ground of discrimination regarding Mr. Ed's access to services for a home build, contrary to s. 6(b) of the CHRA?
- 3) Did PFN retaliate against Mr. Ed for filing a human rights complaint, contrary to s. 14.1 of the CHRA, or otherwise discriminate against him, by not providing the Estate with entitlements that were provided to other PFN members?

### IV. LEGAL FRAMEWORK

[12] Section 5 of the CHRA states that it is a discriminatory practice in the provision of a service "customarily available to the general public" to deny an individual any such service or access thereto, or to differentiate adversely in relation to an individual, on a prohibited ground of discrimination.

[13] Section 6(b) of the CHRA states that it is a discriminatory practice in the provision of residential accommodation to differentiate adversely in relation to any individual, on a prohibited ground of discrimination.

[14] Prohibited grounds of discrimination include family status, age, and disability (s. 3(1) of the CHRA).

[15] Complainants in human rights cases must prove on a balance of probabilities (in other words, that it is more likely than not) that:

- (1) they have a characteristic or characteristics protected from discrimination under the CHRA;
- (2) they experienced an adverse impact; and
- (3) the protected characteristic or characteristics were a factor in the adverse impact.

*(Moore v. British Columbia (Education)*, 2012 SCC 61 at para 33; *Commission des droits de la personne et de la jeunesse v. Bombardier Inc. (Bombardier Aerospace Training Centre)*, 2015 SCC 39 at paras 44–52 [*Bombardier*]).

[16] This is referred to as a “*prima facie*” case of discrimination.

[17] The Estate does not have to prove that PFN intended to discriminate against Mr. Ed (*Bombardier* at paras 40–41). It is the result, or the adverse impact or effect, that is significant (*Ont. Human Rights Commission v. Simpsons-Sears*, [1985] 2 SCR 536, 1985 CanLII 18 at paras 12 and 14).

[18] It is also not necessary for the Estate to show that a prohibited ground of discrimination was the sole factor in the adverse treatment (*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).

[19] Discrimination is not usually direct or intentional. The Tribunal analyzes the circumstances of the complaint to determine whether there is any subtle scent of discrimination. Discrimination may be inferred when the evidence presented in support of the discrimination allegations makes this inference more probable than other possible inferences or hypotheses (*Brunskill v. Canada Post Corporation*, 2019 CHRT 22 at paras 62–63). Evidence of discrimination, even if circumstantial, must nevertheless be tangibly linked to a respondent’s impugned decision or conduct (see *Bombardier* at para 88).

[20] To establish a *prima facie* case of discrimination on the basis of ss. 5 or 6(b) of the CHRA in this case, the Estate must prove that:

- 1) Mr. Ed had a characteristic or characteristics protected from discrimination under the CHRA;
- 2) PFN denied Mr. Ed a service customarily available to the general public or access to it, or that PFN adversely differentiated in relation to him in the provision of a service or of residential accommodation; and
- 3) the protected characteristic was a factor in the adverse impact or denial.

[21] PFN can put forward a statutory defence justifying the discrimination but if it does not establish a justification, proof of these three elements on a balance of probabilities will be sufficient for the Tribunal to find that the CHRA has been contravened (*Bombardier* at para 64).

[22] With regard to the retaliation allegation based on s. 14.1 of the CHRA, the Estate must prove on a balance of probabilities that:

- 1) Mr. Ed previously filed a human rights complaint under the CHRA;
- 2) following the filing of the complaint, Mr. Ed or the Estate experienced adverse treatment from PFN or anyone acting on its behalf; and
- 3) the human rights complaint was a factor in the adverse treatment (*First Nations Child and Family Caring Society of Canada et al. v Attorney General of Canada (for the Minister of Indian and Northern Affairs Canada)*, 2015 CHRT 14 at para 5).

[23] As with the ss. 5 and 6 complaints, under s. 14.1, the Estate must establish a connection between the filing of the complaint and the adverse treatment following the complaint. If this connection is not demonstrated in a complete and sufficient manner, the Estate will not have met the burden of proof. A causal connection is not required, and the previous complaint need not be the sole reason for the adverse treatment. Proof of intention to retaliate is also not necessary, and the Tribunal may rely on a complainant's reasonable perception that the act was retaliation for filing a human rights complaint (see *Millbrook First Nation v. Tabor*, 2016 FC 894 at paras 63–64).

## V. BACKGROUND TO THE COMPLAINT'S ALLEGATIONS

[24] I set out below the core background components of the complaint.

### A. Family groupings within PFN

[25] Mr. Ed was a lifelong member of PFN, which is a Band as defined by s. 2(1) of the *Indian Act*, R.S.C., 1985, c. I-5. It is situated in British Columbia's Fraser Valley near Laidlaw.

[26] PFN's governance was hereditary until about 1972, when the community agreed to be governed by a Chief and two councillors ("Chief and Council"), who are elected in accordance with the *Indian Act* every two years. Since 1987, PFN controls its own membership list, pursuant to s. 10 of the *Indian Act*.

[27] PFN members trace their ancestral roots to Joe and Mary Peters, in particular to one of that couple's children, William Joe (or Willy). Willy's wife was named Emma, and together they had four children. PFN members are descendants of the following four of Willy's children from which four families have emerged:

- Robert J. Peters – Family A
- Clifford Peters ("Clifford Sr.") – Family B
- Frank Peters – Family C
- Doris Peters – Family D

[28] Mr. Ed is a member of Family A. Only members of Families A, B, and C have been elected to Chief and Council over the years. Since 1984, the majority of Chief and Council seats have been held by Family B members. Victoria Peters (Victoria), who is Clifford Sr.'s daughter, has been a councillor for all but two years since 1984. Her sister, Norma Webb (Norma), has been Chief since 2008.

[29] A voters list indicates that, as of May 9, 2019, there were 44 persons registered as voting PFN members.

## **B. PFN land and housing**

[30] PFN has three reserves along the Fraser River. Only the land on Reserve 1 is habitable. The majority of Reserve 1 land is held by members with Certificates of Possession (CP) issued pursuant to s. 20(2) of the *Indian Act*. The remaining parcels are held by PFN as a collective. There are 12 homes situated on Reserve 1.

[31] CPs are allotted by Chief and Council as evidence of the member's right to possession of that parcel of land. A member who is a CP holder may pass their right to other members of PFN, usually by way of inheritance.

[32] As the Commission pointed out in its final submissions, housing on reserves operates within a unique legal framework, largely due to the *Indian Act* and Canada's jurisdiction over Indigenous people residing on reserve. Under the *Indian Act*, title to the reserve is held by the Crown for the use and benefit of the First Nation. Canada provides funding and other assistance to First Nations to improve on-reserve housing with the Nation itself having responsibility for allocating and managing its housing supply. Canada's support for on-reserve housing is primarily administered by Indigenous Services Canada (ISC) and the Canada Mortgage and Housing Corporation (CMHC). ISC, as a government department, has had several different names over the years, but for simplicity I will refer in this decision to all iterations of the organization as ISC.

## **C. Mr. Ed's house**

[33] Mr. Ed had a CP for a parcel of land on Reserve 1. In 1977, he and his wife, Maisie, built a two-storey house on the property and raised their family in it. Maisie is not a PFN member. She is a member of the Seabird First Nation (Seabird) situated across the river from PFN.

[34] Following a series of CMHC inspections of the housing on PFN reserve land starting in 1991, it was determined that Mr. Ed's home needed several repairs and renovations, including some electrical work.

[35] Accordingly, in 1996, Mr. Ed and Maisie moved out of the house temporarily for the repairs and renovations to be made. Maisie had registered for classes at a school in Merritt, B.C., two hours away, and therefore stayed at a hotel while there on weekdays. Mr. Ed had found an apartment at Seabird to reside in.

[36] The work was conducted under a CMHC project. PFN hired the contractors for the repairs and renovations, and the PFN Chief at the time, Frank Peters (Frank), served as project manager.

[37] On January 18, 1997, while Mr. Ed was in Merritt accompanying Maisie, the house burned down. All of their belongings in the house were lost.

[38] The house has never been rebuilt. The Estate claims that, over the ensuing years, Mr. Ed repeatedly asked PFN for assistance to rebuild the house but was denied because he is a member of Family A and also because of his age and disability. The complaint alleges that PFN did not help Mr. Ed gain access to housing programs and services but at the same time offered that assistance to members of Norma's and Victoria's family. Mr. Ed continued residing with Maisie in an apartment at Seabird until he passed away.

#### **D. Treatment of Mr. Ed at a PFN meeting**

[39] Mr. Ed alleged in his complaint that Chief and Council had a "standing order to harass" him whenever he was on the reserve or at PFN meetings. The complaint refers specifically to a PFN members' meeting held at a hotel in Chilliwack on October 5, 2016. Mr. Ed alleged that PFN called in a security guard to forcefully remove his wife Maisie from the meeting room. Mr. Ed later left the room as well to check on Maisie and was confronted by police officers who were called in by Norma and Victoria's niece, Shawna Peters (Shawna), allegedly in part because his breath smelled of alcohol. The police officers saw no reason to intervene, apologized to Mr. Ed for the inconvenience and left.

## **E. The Seabird Settlement and distribution entitlements**

[40] In August 2019, Canada settled a specific claim by PFN for compensation regarding a transfer of reserve land that was made in 1959 without PFN's consent (the "Seabird Settlement"). The settlement amount was for over \$21 million. PFN members approved the agreement in a ratification vote held on May 9, 2019. Mr. Ed participated in the vote.

[41] On May 10, 2019, Chief and Council adopted a BCR directing that each registered band member as of May 9, 2019, would receive a distribution of \$12,000, paid in four equal instalments of \$3,000 (June 30, September 30, and December 9, 2019, and March 30, 2020).

[42] The payments were eventually delayed and the first was made in late November 2019, which was over three months after Mr. Ed's death. The Estate was provided the first \$3,000 instalment, but PFN did not pay the Estate any of the other instalments.

[43] On October 31, 2019, Chief and Council passed a BCR adopting the 2019 Distribution Policy and Procedures (the "Distribution Policy"), according to which all PFN members were to receive a \$200,000 distribution. However, none was provided to the Estate.

[44] The Estate alleges that PFN denied it three of the four distributions authorized by the BCR of May 10, 2019, and the \$200,000 distribution as part of its ongoing discrimination in the provision of services (s. 5 of the CHRA) and in retaliation to Mr. Ed's human rights complaint (s. 14.1 of the CHRA).

## **F. Credibility of witnesses**

[45] The Estate argued that the credibility of PFN's witnesses should be subjected to a "robust analysis". The Estate referred me to several findings by the courts and the Tribunal in other cases regarding the conduct of members of Chief and Council. The Estate also pointed to some alleged contradictions in the evidence of certain witnesses, though most have little bearing on the issues of the case before me.

[46] In my reasons below, I have explored credibility issues where they are called for, but I find there is no basis to discount any witness's evidence outright and in advance. I am also mindful that given the scope of the evidence, some of which relates to events going back decades and involving persons who have passed away, much of it is based on hearsay. While the Tribunal can receive and accept any evidence whether or not it would be admissible in a court of law (s. 50(3)(c) of the CHRA), I have accounted for the inherent reliability issues regarding hearsay where warranted.

## **VI. ANALYSIS**

[47] I must first determine whether Mr. Ed had the personal characteristics protected from discrimination, as alleged in the complaint (family status, age, and disability).

### **A. Grounds of discrimination**

#### **(i) Family status**

[48] As the Supreme Court of Canada held in *B v. Ontario (Human Rights Commission)*, 2002 SCC 66 at para 60, animosity towards a person's family may constitute discrimination based on the prohibited ground of family status (see also *Kamalatisit v. Sandy Lake First Nation*, 2019 CHRT 20).

[49] I am satisfied on a balance of probabilities that divisions have existed for decades between the family lines at PFN and, in particular, between Family A and Families B and C.

[50] Leah McNeil (Leah), Mr. Ed's daughter, testified that the disagreements probably started in the late 1980s, when Frank was Chief. Disputes arose about land issues, housing renovations, and general band management. But the biggest trigger was Chief and Council's denial of membership for Mr. Ed's children. It gave him the sense that his family did not belong and would be treated like outsiders.

[51] This denial occurred in the context of an application in October 2012 by 16 persons to become PFN members, including Ed's daughter, Leah, and his wife, Maisie, who were

Seabird members. The applications did not include any individuals from Families B and C. PFN declined the membership applications.

[52] This led to a series of cases before the courts and the Tribunal regarding the denial of membership. See, for instance, *Peters First Nation v. Lock*, 2024 FC 113 (Federal Court denying a request to stay the remedies ordered by the Tribunal in *Lock v. Peters First Nation*, 2023 CHRT 55), *Peters v. Peters First Nation*, 2023 FC 399 (the Federal Court ordered PFN to grant membership to the applicant, which had been denied in bad faith), and *Peters First Nation v. Engstrom*, 2021 FCA 243 (upholding the Federal Court finding that Chief and Council's decision to deny membership to two individuals was unreasonable and procedurally unfair). This is just a sample of the cases.

[53] In addition, over the years, Family A members were dissatisfied with many of Chief and Council's decisions in general, and the Estate claims that their requests for change were often ignored. For instance, in 1996, a lawyer representing several Family A members sent a letter to PFN expressing concerns about intimidation and harassment and requesting documents that had not been provided.

[54] Victoria denies the Estate's allegations. She testified that she gets along with everyone at PFN and that they are all family. Norma testified that the divisions within the community were "like regular family stuff". I am not persuaded by their interpretation of the relationship between the families. Engaging in 20 or more cases before the courts to litigate disputes between the families regarding membership and other issues is not regular family stuff.

[55] I also take note of an email exchange that occurred on October 22–23, 2018, between an ISC employee and Leanne Peters (Leanne), a Family B member, regarding the court cases initiated by Family A members. Leanne asked in the emails for a mediator to be appointed to deal with "this family", preferably someone who has dealt with people who have "mental health issues", and stated that she would prefer to "hear what the quiet people have to say". Leanne referred to the family as bullies who are "calling the shots".

[56] It is therefore evident that there is a long-standing animosity between Mr. Ed's family and the other families, which the term family status encompasses.

**(ii) Age**

[57] When Mr. Ed's house was destroyed by a fire, he was 56 years old and a recognized elder in the community, according to the evidence of Andrew Genaille (Andrew), whose grandfather was Frank (Family C). Although he is not from the same family, Andrew was Mr. Ed's ally in the latter's dispute with PFN. Andrew helped Mr. Ed draft the human rights complaint, and he represented Mr. Ed before the Commission, prior to the referral of the complaint to the Tribunal for inquiry. Andrew considers himself a whistleblower regarding PFN's financial management under Family B's leadership.

[58] At the time of the band meeting of October 5, 2016, Mr. Ed was 74 years old and, according to Victoria's testimony, he was the oldest PFN member present at the meeting. He was 76 when he filed the complaint.

[59] I am therefore satisfied that Mr. Ed was a more aged person relative to the rest of the PFN population, certainly at the time of the meeting and, overall, during the course of the years following the loss of his house.

**(iii) Disability**

[60] Disability is defined under s. 25 of the CHRA as "any previous or existing mental or physical disability and includes disfigurement and previous or existing dependence on alcohol or a drug".

[61] In *Quebec (Commission des droits de la personne et des droits de la jeunesse) v. Montréal (City)*; *Quebec (Commission des droits de la personne et des droits de la jeunesse) v. Boisbriand (City)*, 2000 SCC 27 at para 80, the Supreme Court of Canada stated that, when considering the context in which distinctions are drawn, courts must examine whether an **actual or perceived** limitation causes the individual to experience the loss or limitation of opportunities to take part in the life of the community on an equal level with others.

[62] Norma testified that it was common knowledge that Mr. Ed had an alcohol dependency, noting that he always had a beer in his hand when fishing at PFN. David Peters

(David), who is a current councillor, testified that one never knew if Mr. Ed would show up somewhere sober or drunk.

[63] I am satisfied that there was at least a perception, certainly among members of Chief and Council like Norma, that Mr. Ed had an alcohol dependency, which would constitute a disability within the meaning of the CHRA.

## **B. Adverse impact**

[64] Having determined that Mr. Ed possessed the protected characteristics under the CHRA that he alleged in his complaint, the next issue to consider is whether he experienced the adverse impacts that he alleged.

[65] For the reasons that follow, I find that the Estate did not establish that Mr. Ed experienced the alleged adverse impacts of being treated adversely when accessing services for a new home build, being expelled from the membership meeting, and being denied the larger disbursement of \$200,000 under the Distribution Policy. However, I find that there was an adverse impact in relation to the three unpaid instalments of \$3,000 that the Chief and Council authorized through the BCR of May 10, 2019.

### **(i) Home build**

[66] Mr. Ed alleged in his complaint that he had been requesting a new home build from Chief and Council ever since his house burned down and that he was always denied. He alleged that assistance and programs were available to help repair, renovate, or build homes for First Nations persons but that the programs and services were only accessible through the PFN band office, which must apply on the individual's behalf. Mr. Ed alleged that, at the same time as he was being denied access to those programs and services, Norma and Victoria accessed them for their niece Leanne to build a new house and to make repairs to other PFN members' homes. Mr. Ed submits that these denials are in breach of ss. 5 and 6(b) of the CHRA.

[67] As a preliminary matter, I must address the overlap in this case between ss. 5(b) and 6(b) of the CHRA. There is no question that adverse differentiation in the provision of residential accommodation based on discriminatory grounds falls under s. 6(b) of the CHRA. But can such a denial also constitute adverse differentiation in the provision of goods, services, facilities, or accommodation customarily available to the general public, within the meaning of s. 5(b) of the CHRA?

[68] The “services” referred to in s. 5 of the CHRA mean something of benefit being held out as services and offered to the public (*Watkin v. Canada (Attorney General)*, 2008 FCA 170 at para 31 [*Watkin*]). The Estate submits specifically that the alleged adverse differentiation and denial of access to housing programs occurred during the provision of a service held out and offered to the public (i.e., PFN members). PFN did not challenge this legal submission in its argument, and, in any event, I find it is well-founded. The access to housing and other related programs and services that PFN could provide to its members fulfills the criteria for s. 5.

[69] Ultimately, there is no distinction to be drawn between s. 5 and s. 6(b) of the CHRA in relation to this portion of the complaint’s analysis. The allegations under both provisions are rooted in the same facts—the alleged adverse differentiation and denials regarding Mr. Ed’s efforts to have his house rebuilt.

[70] Are these allegations of adverse impact supported by the facts? No.

[71] The Estate alleged that PFN ought to have assisted Mr. Ed more than it did with accessing housing services and, ultimately, ought to have provided Mr. Ed with a new house. Regarding the provision of a new house, I find that the Estate has not established on a balance of probabilities that a new house is a “benefit” offered by PFN to its members, as would be required to satisfy the definition of “service” in s. 5 of the CHRA. PFN does not build homes for its members. There is no evidence that PFN simply built a home for any members of Families B or C. Contrary to the complaint’s allegations, Leanne testified that she has never had a house built. She resides with her children in her grandfather’s house (Clifford Sr.).

[72] The only Family B member who did build a home after Mr. Ed's house burned down was Norma. She paid for it herself after obtaining a bank loan, secured by a guarantee from PFN. As I explain below, there is no evidence that Mr. Ed ever made any similar efforts as Norma to obtain financing or secure a guarantee from PFN.

[73] Housing funding at PFN has evolved over the years. Until the mid-1990s, the Area Indian Council and Stó:lō Nation, of which PFN formed a part, managed housing-related requests. By the fall of 1996, PFN assumed full control over its housing.

[74] Canada's support for on-reserve housing is primarily administered through ISC and the CMHC. In British Columbia, ISC supports on-reserve housing for First Nations through its housing subsidy program and Ministerial Loan Guarantee (MLG) program. The subsidy program provides financial assistance on a project-by-project basis for construction, rehabilitation, or renovation of houses.

[75] MLGs assist First Nations and their members in accessing loans from financial lending institutions for on-reserve housing. ISC issues MLGs to lenders to secure these loans. Only a First Nation can apply for an MLG, either on its own behalf or on behalf of a First Nation member. Since title to land on reserves is held by Canada for the use and benefit of the First Nation, financial institutions require MLGs to provide an acceptable security for on-reserve house construction loans. MLGs may be issued to a First Nation acting on its own behalf or on behalf of an individual First Nation member.

[76] In order to obtain an MLG, a First Nation must submit a BCR (or equivalent authorizing document) and supporting documents to ISC in support of a housing project or in support of an individual member's request for an MLG. Before issuing a BCR, a band council must be satisfied with the reputation and financial responsibility of the individual member because if the person defaults on the loan, the band council will have to assume the responsibilities under the loan agreement. The defaulting member may also be required to give up possession of the land.

[77] The Estate contends that this requirement effectively meant that Mr. Ed could never get any financing. Given the acrimony between him and Chief and Council, PFN would never adopt a BCR in support of the MLG application.

[78] However, aside from the fact that there is no evidence of Mr. Ed ever having approached Chief and Council to ask that a BCR be passed in support of an MLG application for him, there is no evidence of his ever approaching a bank to seek pre-approval for a loan. Some PFN members testified that, before building their homes, they first spoke to their financial institution to confirm that a loan would be granted to them if an MLG was obtained.

[79] For instance, Victoria testified that, in 1987, after her father transferred possession of some land to her, she acquired plans and cost estimates for her intended house. She then went to the bank to be qualified for a loan. After obtaining the bank's approval, she went to PFN and asked that it apply to ISC for an MLG. ISC approved PFN's MLG application, which enabled the loan to be advanced to Victoria, and she built her house in 1988. She paid off her loan by 2013.

[80] Norma testified that, in 1998, she decided to build a house on the reserve. She spoke to Andrew's mother, Francis Genaille (Fran), who worked at the band office for years and knew "all the ins and outs" about band matters, including housing. Fran advised Norma to speak to a bank first to see if she qualified for a loan. After getting the bank's confirmation, Norma went back to Fran, who advised her that she would now need to file an MLG application. After that was done, Norma obtained construction plans. She then hired a contractor after reviewing three bids. Her initial loan was for almost \$100,000, and she paid it off by 2016. ISC contributed to the construction costs in part (\$23,000), for the cost of the wells and septic systems, payable under one of the ISC's programs.

[81] There is no evidence that Mr. Ed ever contacted a financial institution to explore his financing options. Even if the first step had been to obtain a BCR from Chief and Council, there is no evidence of his ever taking any formal step to obtain one. It was pointed out that there was confusion about which councillor or PFN employee was responsible for housing at PFN. Norma testified that Fran, who worked in the band office until 2016, was very familiar with the process for obtaining financing for house builds. Yet, there is no evidence Mr. Ed ever asked Fran specifically for advice on how to proceed when he would visit the band office from time to time to complain about Chief and Council other than to say that he wanted a house to be built for him.

[82] It is not as if Mr. Ed was not aware that CP holders used their own funds to build their houses and that some form of guarantee was needed to obtain any necessary bank financing. The evidence shows that, in 1975, he took out a loan for which a term deposit of \$15,000 in the PFN's name was provided as security. The loan was paid off some time in 1980. As Mr. Ed recounted in an audio recording of an interview he gave in 2017, he invested a total of \$125,000 to build his home.

[83] Andrew testified that, in 2015 or 2016, Mr. Ed spoke to him about his desire to get a house. Andrew confirmed under cross-examination that, to his understanding, the ordinary process for obtaining a home construction loan is to first get a plan or estimate of the proposed construction cost and then go to the bank for confirmation that they will advance the loan if an MLG is ultimately obtained. Once the bank approves, then the PFN member goes to Chief and Council to ask for their support in obtaining an MLG. Andrew confirmed that he and his sister had discussed this process with Mr. Ed around 2016. To Andrew's knowledge, Mr. Ed never went to any financial institution to seek pre-approval for a loan.

[84] Mr. Kipp acknowledged in his evidence that among the documents he found in Mr. Ed's and Maisie's filing boxes, which he consulted for this case, was a guide from the Legal Services Society of British Columbia printed in October 2007, which outlined the benefits, services, and resources available for Indigenous Peoples. The Estate entered the guide into evidence. The guide states explicitly that ISC funding does not pay for a house's construction costs and that the First Nation member must find additional funding, such as a bank mortgage, before they start to build or renovate a home.

[85] Ultimately, the evidence shows that Mr. Ed's efforts regarding a house reconstruction, over the course of the 20 plus years following its destruction, were to simply tell people that he wanted and expected PFN to build him a new house, as confirmed by the evidence of Leah, Sam, and Andrew.

[86] Andrew testified that he used to do some work in the Band office over 20 years ago. He recalled Mr. Ed coming into the office from time to time and that Chief and Council's attitude was always dismissive, with a tone of "Oh, he wants a house".

[87] On one occasion in 2001, Andrew recalls Mr. Ed coming into the band office with a list of grievances about fishing and housing. Victoria asked Fran to deal with him. In the meantime, Victoria called Andrew's father, Vern, who was an RCMP officer and lived next door to the band office, to come over. She told Vern that Mr. Ed was being outlandish and irrational. Vern spoke to Mr. Ed and escorted him out. Mr. Ed left peacefully. Vern later lectured Victoria about having called him to intervene. Victoria denies the claim that Vern somehow admonished her.

[88] The Commission argued that this incident along with other evidence show that PFN treated Mr. Ed dismissively in contrast to other members. However, the evidence does not support this allegation with respect to his requests for housing. I do not find that PFN treated Mr. Ed adversely when he tried to access housing services. On the contrary, when advised about the formal process for financing a home build, Mr. Ed said he would refuse to fill out any forms stating that he was not interested in completing any paperwork any forms or paperwork that could lead to his house being rebuilt.

[89] Victoria testified that Mr. Ed spoke to her quite a few times over the years about housing. One of those occasions was on December 18, 1997, when she saw Mr. Ed by the side of the road and spoke to him. Victoria wrote down the content of this conversation in a notebook, and her notes were entered into evidence. Their initial discussions were regarding whether he had proper permits to cut some trees down, as required by ISC. He then asked her "what the hell is happening" regarding his house, and "What are you guys going to do about it?"

[90] Victoria asked him if he had "applied" for another house. He said no. She asked him if his house had been insured, and he said no. He still maintained that PFN should build him another house. He insisted that he would not fill out any forms. He just wanted PFN to build him another house.

[91] Mr. Ed's reluctance to file forms is similar to an event recorded in Chief and Council's minutes of a meeting in November 1991. It was noted that Mr. Ed was seeking renovation funding under a program called the Residential Rehabilitation Assistance Program or RRAP, but he had failed to bring in his T4 tax forms for submission to the appropriate authority,

which was required for him to qualify for the funding. To Victoria's recollection, Mr. Ed never brought in the forms while she was on Chief and Council, and he presumably never got that funding.

[92] Victoria also raised concerns to Mr. Ed during their roadside conversation about the debris from the burned house that had not been removed. Mr. Ed said he would leave it that way as it was his property.

[93] Victoria testified that she always tries to take notes of these types of interactions, and she has an independent recollection of this conversation and of having written the notes in her car right after speaking to Mr. Ed.

[94] The minutes from a Chief and Council meeting held on September 7, 2000, also refer to Mr. Ed's claim to have entitlement to a house build. The minutes note that he said he had a letter from ISC stating that PFN must build him a house. According to the minutes, this letter was never produced to Chief and Council. The Estate never filed into evidence any such letter either.

[95] Victoria's evidence is reflective of what appears to have been Mr. Ed's perspective at the time, as demonstrated in the audio recording of his interview from 2017. In the interview, Mr. Ed highlighted the fact that the fire occurred around the time when PFN had hired the contractors to renovate the house. Mr. Ed claimed in the interview that ISC had told him that "they [PFN] should build you a house. They were renovating when it happened. They are responsible".

[96] The Estate did not produce any document from ISC to support this claim, but I find Mr. Ed's comment instructive. It suggests that he felt PFN was responsible for the loss or, to frame it in legal terms, is civilly liable because of PFN's involvement in the renovations. In fact, around three months after the fire, on April 16, 1998, a lawyer representing Mr. Ed wrote to PFN asking for the name of the contractor and disclosure of all documents pertaining to the renovation.

[97] On April 20, 1998, PFN's lawyer sent a letter to Mr. Ed's lawyer in response. The letter identified the contractor and explained that the renovations had been completed one

month before the fire. Mr. Ed had resumed possession of the house. He had turned on the house's electrical heaters the day before the fire. I note that these observations were also reflected in an RCMP report about the incident, dated March 17, 1997. The RCMP report states that the house was vacant and under renovation at the time and that the investigation into the fire could not substantiate whether arson played a role in the incident.

[98] The lawyer's letter also mentions that insurance is the responsibility of PFN homeowners and that PFN had been informed that Maisie had met with an insurance broker before the fire but had declined to insure the house for the period that the couple was not residing there.

[99] There is no evidence that Mr. Ed ever sued the contractor or PFN for the house's loss. As PFN points out, neither Mr. Ed nor his lawyer at the time ever denied the statements in PFN's lawyer's letter.

[100] Mr. Ed may very well have felt that that the fire was somehow PFN's fault. But that does not demonstrate that PFN was denying him residential accommodation or housing services to which he was otherwise entitled, let alone that his family status or other personal characteristics were factors in the decision not to provide him a "free house", as Victoria described it, to which neither he nor any other PFN member is entitled.

[101] As support for Mr. Ed's allegation that he was adversely treated regarding housing, he claimed in his human rights complaint that repairs had been done to homes of other families that were denied to members of his family. However, the evidence does not bear this out.

[102] To begin with, evidence was presented of PFN providing funding for multiple repairs of Mr. Ed's house before it burned down. Chief and Council meeting minutes from 1990 state that the installation of new siding and a new porch was funded for Mr. Ed's home and those of members of the other two families. A document from 1992-93 shows that CMHC funding was provided to replace Mr. Ed's roof as well as to fund similar repairs to the homes of members from all the families.

[103] Samantha acknowledged in cross-examination a series of renovations that PFN funded for her house in 1999 and for her grandmother Minnie's house in 2004. Leanne testified that her grandfather's house and five other houses, including those of Family A members, had repairs done to rectify mould. Samantha testified that she herself paid \$45,000 to renovate her parents' house before she moved into it. But she also acknowledged that she never sought assistance from PFN for the repairs because "they simply won't help me". Thus, there is no evidence that a funding request was actually denied.

[104] Andrew referred to an email exchange between ISC and PFN from 2018. It appears to indicate that 8 of the 10 homes still standing at the time received funding for mould remediation. The two that did not were Mr. Ed's brother's and Fran's. Victoria and Norma testified that the reason was that those homeowners did not allow the inspector into their homes to confirm the mould issue and make the necessary report.

[105] In cross-examination, Andrew did not deny the suggestion put to him by PFN counsel that Fran had refused access to anyone associated with PFN's Chief and Council to enter her home for inspection, though he claims the independent inspector was allowed in. David, who is Fran's brother and is a current councillor, testified that all houses were to be inspected for mould remediation, but that "some families" don't want Chief and Council members in their homes. Norma and Victoria testified that ISC made it clear that mould remediation funding would only be provided after a house inspection that found it was required. Any homeowners that refused to allow the inspection did not get the funding. The homeowners' family lines had nothing to do with whether ISC provided the remediation funding. From the evidence overall, it appears the inspector was being accompanied by Chief and Council members, who were not welcome in some homes. I am not persuaded on the balance of probabilities that Fran allowed the inspection, and I am certainly not convinced that mould remediation repairs were denied in 2016 due to any homeowner's family status.

[106] In its final submissions, the Commission prepared a table that presumably shows a pattern of discrimination against the Family A members whose requests were "consistently denied or ignored" while members of Families B and C "received support" from Chief and Council. I find the list's entries to either be inaccurate or insufficiently supported by the evidence. For instance, the claim that Glen Peters asked for a house in 1987 and did not

get a response is only based on the hearsay of one witness, Samantha. No document was filed in support. There are references to Victoria, Norma, and Fran getting funds to cover well and septic systems costs. The evidence shows, however, that the federal authorities provided this funding to all homeowners. Pam Waddel, David's daughter, is said to have had PFN support her MLG request and was awaiting a CP for her land. This is consistent with the rest of the evidence that the normal process for persons to build houses is through bank financing, and not by simply asking the band for a house.

[107] Samantha testified that she and her sister, Betty, asked for a house in 1993 and 1996. The table says they were not responded to in 1993 and were denied in writing by PFN in 1996. The table fails to note that, at the time, Samantha was a university student, and her letter stated simply that she was making an "application for housing". PFN's response to her and to Betty was that PFN does not provide social housing. This is consistent with the other evidence in this case—that PFN did not build houses for anyone. CP holders built their own houses financed by loans secured by MLGs.

[108] The Commission's table states that Annette Peters (Annette) submitted an application for a house. An exhibit is referenced from 1992–93, which is a form saying that the member would like to move into a house of her own and mentions a new house being constructed. I note that the document predates the year when PFN took over the management of housing in 1996 but that, in addition, no house was ever constructed for Annette.

[109] In sum, the table shows that persons who made MLG requests received "support". There is no indication that any of the Family A members mentioned in the table made MLG requests.

[110] Mr. Ed's complaint also alleged that PFN had promised someone a home in exchange for their vote in elections. Andrew testified about the allegation, which was based on hearsay. He said that he had been told by a PFN member named Swede Peters (Swede), who has since passed away, that Billie Jean Peters (Billie Jean) was given a home around 2022 and PFN paid for it. Billie Jean is a member of Family A.

[111] Victoria explained the circumstances. Billie Jean is blind and has nine children. She lost her home to a fire and had been renting a dwelling elsewhere. PFN had recently set up a corporation called PFN 3 Feathers (the “Corporation”), which apparently is receiving funds from a metal recycling operation that has been set up on reserve lands in recent years. Given Billie Jean’s circumstances, a decision was apparently made to give her a loan to buy a trailer and install it on some area of rocks that were generated from the nearby pipeline construction. Billie Jean bought the trailer using some of her funds from the Seabird Settlement distributions. She is repaying the loan to the Corporation. Admittedly, Victoria’s evidence about the Corporation’s decision-making process was somewhat nebulous. But it is not the Tribunal’s role to inquire into the corporate governance of the Corporation. The issue for me is whether PFN gave a free house to Billie Jean, which the evidence does not bear out. In any event, Victoria testified that the circumstances regarding the trailer are novel. PFN has never had access to the kinds of funds that are now at the Corporation’s disposal and certainly not back in 1997 and the ensuing years.

[112] There was also mention in the evidence of a duplex that the Corporation recently built on the reserve, after Mr. Ed’s passing. It was explained that this is not anyone’s house but rather it was built to lodge those members whose houses were uninhabitable while their houses’ foundations were being raised as a flood protection measure. PFN had acquired ISC funding to raise all the houses on reserve.

[113] Generally speaking, the Estate submits that, over the two decades that Mr. Ed was seeking a new house, PFN offered him no solutions other than to tell him to apply for a new house, which PFN did not assist him with. There was never any talk of trying to get funding or forward-thinking plans to solve the issue. The general sentiment was “it’s not on us to do it”. Furthermore, PFN never had a real housing policy, nor did it have a publicly known delegated housing manager. Chief and Council and PFN administrators were known to be unavailable and unresponsive, kept limited posted hours, and were generally not present for those times in any event.

[114] There may in fact be some serious administrative issues with PFN’s operations. As noted, PFN has been brought before the courts many times. However, that does not necessarily mean that Mr. Ed was adversely differentiated with respect to housing in the

specific facts of this case. I am convinced that he simply, and perhaps in his personal view justifiably, believed PFN owed him the construction of a house. He was not looking for an MLG or other means of assistance to build a house himself with his own resources. But the facts bear out otherwise. PFN did not build houses at its expense for any member of any family.

[115] Consequently, I am not persuaded on the balance of probabilities that Mr. Ed experienced the alleged adverse impact of being denied services that would have enabled him to build a house. PFN adequately assisted him in the circumstances by telling him the steps to take and about which he was aware in any event. He did not take those steps.

#### **(ii) Treatment at the membership meeting**

[116] The Estate claims that PFN adversely treated Mr. Ed at a general membership meeting by escorting him and Maisie out of the meeting with security officers and then calling the RCMP to engage with Mr. Ed.

[117] The Estate contends that, in so doing, PFN discriminated against Mr. Ed in the provision of a service available to the general public within the meaning of s. 5 of the CHRA.

[118] Did PFN provide a service to its members by holding a general membership meeting? Yes.

[119] *Watkin* held that “services” mean something of benefit being held out as services and offered to the public, which I have already stated consists of the PFN members in this case. The Tribunal in *Hughes v. Elections Canada*, 2010 CHRT 4 at paras 53–54, concluded that the running of elections fits within *Watkin*’s definition as a public service that provides the means by which the public may exercise its democratic franchise. Holding a membership meeting, particularly one where decisions can be taken that affect the members’ status within PFN, is similar in nature to running an election. The organization and running of such meetings is a service that PFN provides to its members. Consequently, if, based on a prohibited ground of discrimination, PFN denies access to a member or adversely differentiates in relation to that member during that meeting, it may have engaged in a discriminatory practice within the meaning of s. 5 of the CHRA.

[120] The meeting was held at the Coast Hotel in Chilliwack on October 5, 2016. The purpose of the meeting was to discuss and review amendments to PFN's membership code that Chief and Council were proposing. A notice of vote was circulated to the members on September 22, 2016. It stated that that the meeting was "for Band Members only" and would be held at the hotel at the indicated date and time. The notice also said that a ratification vote would be held 10 days later, on October 16, 2016. The notice said copies of the proposed amended membership code were available at PFN's office.

[121] Family A members disagreed with the proposed amendments, and they intended to express their views at the meeting. Some Family A members asked Mr. Kipp to prepare a PowerPoint presentation that would be shared at the meeting outlining their objections to the amendments. According to Mr. Kipp, the family members knew that Chief and Council would have PFN's legal counsel present at the meeting, so they asked Mr. Kipp to serve as their representative there as well. The family members entered into a contract with him to prepare the presentation and act as their representative at the meeting.

[122] Mr. Ed showed up at the meeting accompanied by Maisie, who had driven him there. Mr. Ed did not have a driver's licence, so he usually relied on Maisie for transportation.

[123] Several witnesses testified about what ensued at the meeting with some variances in their recollection. What is certain is that at some point Mr. Kipp, Maisie, and Mr. Ed left the meeting room.

[124] Mr. Kipp testified that he was the first one to leave the room. Leanne, who was a councillor at the time, said that she approached Mr. Kipp and told him that he had to leave the meeting because it was for PFN members only, as the notice had said. Mr. Kipp was not a member. According to Leanne, Mr. Kipp initially refused to leave but eventually he did. Mr. Kipp claims that hotel security officers escorted him out of the room.

[125] PFN had not hired any security service for the meeting. Leanne testified, however, that, before Mr. Kipp left the room, she went to the hotel's front desk and asked them if they had any security officers to escort someone out who was refusing to leave. Leanne claims that the front desk told her that the hotel did not have security officers working there and that she returned to the meeting room. Mr. Kipp insists that security officers escorted him out.

[126] Mr. Kipp, as well as Andrew and Samantha, also testified that security officers escorted Maisie out of the meeting room later, after Mr. Kipp had stepped outside. Leanne, Norma, and Victoria all agree that Maisie left the room after Mr. Kipp did, but they do not recall Maisie being escorted out with security officers.

[127] However, there is consensus among those witnesses who spoke about Mr. Ed's departure that he left the room well after Maisie. According to Samantha, it was around 15 minutes later. Mr. Ed had become upset with the fact that Maisie was not allowed to stay in the meeting. According to Andrew, he became "vocal", and Norma said he had raised his voice. Samantha noted that he was expressing his sentiments to the Family A members who were sitting as a group at one end of the meeting room.

[128] According to Andrew, his sister Lisa Genaille, who did not testify at the hearing, spoke to Victoria about the fact that Mr. Ed would need to accompany Maisie if she left the room. Maisie had early onset dementia at the time apparently, and Mr. Ed did not want to leave her alone. Again, according to Andrew, Victoria was unwilling to "accommodate" Mr. Ed. Victoria does not recall ever being told that Maisie was ill or that Mr. Ed needed a form of accommodation for Maisie. Victoria simply recalls that the focus of discussions was on the fact that only PFN members could stay in the room.

[129] In any event, Mr. Ed did eventually leave the room to go to the hotel lobby where Maisie had gone.

[130] Samantha testified that Mr. Ed was escorted out with two security officers. Victoria, Leanne, and Norma do not recall any security officers being present, let alone escorting him out.

[131] It was once Mr. Ed was out in the hotel lobby that the RCMP became involved. According to Norma and Victoria, they learned after the meeting that their niece, Shawna, called the RCMP to come to the hotel. Shawna allegedly told the RCMP that Mr. Ed was "picking fights" and that she smelled alcohol on his breath. When the police officers arrived, they met with Mr. Ed in the lobby and, according to Andrew, they did not smell any alcohol on Mr. Ed's breath. They concluded that there was nothing to be concerned about and left. Andrew testified that, in his view, although there was a "ruckus" when Mr. Kipp and Maisie

were asked to leave the meeting room, Mr. Ed was not “picking fights” and he was not belligerent. After the police left, Mr. Ed and Maisie went to the parking lot and drove home. Of note, the meeting ended without any resolution of the matter for which it had been convened, and the membership code was not amended.

[132] Norma and Victoria maintained in their evidence that they never called the RCMP nor that they directed Shawna to do it. Shawna was not an employee of PFN and made the call on her own. Shawna only told Chief and Council about it later, after the meeting.

[133] Taking all of these various accounts into consideration, I am not persuaded that Mr. Ed was denied access or otherwise adversely treated with respect to the meeting. Although some of the witnesses said they saw security officers accompany him when he left, no one actually testified that he was told to leave. As Mr. Ed himself wrote in his complaint, it was Maisie who was told to leave the room, not he.

[134] I am convinced that Mr. Ed left the room to be with Maisie. Evidence was adduced showing non-member spouses were excluded from other members’ meetings in the past, though the topics discussed were apparently of a more confidential nature than the membership code.

[135] The Estate points out that Billie Jean’s husband, who is not a PFN member, was allowed to stay in the meeting room. However, as previously mentioned, Billie Jean is blind and, as a member, she needed her husband’s assistance to participate in the meeting. In Mr. Ed’s instance, it was Maisie, who is not a member, who the Estate claimed needed Mr. Ed to accompany her. Mr. Ed did not need Maisie’s assistance to fully participate in the meeting.

[136] Four other non-members stayed in the room as well. Two PFN lawyers and two ratification officers who PFN calls upon whenever there is a ratification vote. This is not indicative of any differential treatment regarding Mr. Ed. These persons were there to provide services to the meeting. Given the political differences within the community, some may have perceived the lawyers as not serving all the members’ interests, but this does not show adverse differentiation towards Mr. Ed as such.

[137] As I've noted, much was made in the evidence about whether security officers were on the scene or not. I am prepared to accept that they were, likely, as Mr. Kipp suggested, as general security for the hotel. Norma and Victoria simply could not recall if any security officers were present, whereas the other witnesses were certain they were there.

[138] However, the issue is of little consequence with respect to Mr. Kipp and Maisie. Whether or not they were escorted out, the fact is that the meeting was closed to them, and they had to leave.

[139] Was Mr. Ed escorted or forced out? Only Samantha testified to that, claiming to have heard Mr. Ed say to a security officer "don't touch me". He may very well have said that, but it may have been when Maisie was being escorted. It makes no sense for security officers to have gotten involved when Mr. Ed went out to the hotel lobby some 15 minutes later, seemingly with the intention of joining Maisie. Why would the security officers not have taken him outside at the same time as Maisie if they had been instructed to remove him?

[140] I also note that while Samantha was quite adamant in her evidence in chief that the security officers removed Mr. Ed, later, in cross-examination, her responses about who if anyone asked Mr. Ed to leave were unclear, stating "that's a good question" and "I am not sure how to answer that". She did not recall the identity of the person who she claims asked Mr. Ed to leave.

[141] As for the call to the RCMP, there is insufficient evidence to link it to PFN and its Chief and Council. The mere fact that Shawna is Norma's and Victoria's niece is not enough to conclude that PFN directed that the police be called to deal with Mr. Ed.

[142] In sum, therefore, I am not persuaded that Mr. Ed was denied access to the membership meeting or was adversely differentiated in relation thereto. He, along with all the other Family A members, was not asked to leave. He felt he needed to step outside to join Maisie, but the evidence does not show that he was expelled from the meeting.

[143] Although Mr. Ed's complaint and the Estate's submissions focused on the membership meeting, Mr. Ed had claimed in the audio recording of his 2017 interview that PFN had called the RCMP on him two other times.

[144] Based on the evidence before me, it would appear the first of those events may have been the 2001 incident to which I referred earlier in this decision, when, according to Andrew, Victoria asked his father, Vern, who is an RCMP officer, to come to PFN's office when Mr. Ed was there presenting his grievances. Andrew recalls that Vern admonished Victoria for having called him over. Victoria denies having been admonished, though she did not deny having called Vern. However, the evidence is that Vern was basically part of the community, although not a PFN member. He was Andrew's father and lived next door. I am not persuaded that this constitutes "calling the RCMP on Mr. Ed".

[145] The second event relates to the disbursement of funds to members following a settlement agreement that PFN signed regarding the construction of the Kinder-Morgan pipeline in the region. Mr. Ed disagreed with the settlement amount that PFN had agreed to. Victoria testified that Swede told her that he had heard Mr. Ed say he would shoot the Chief and Council over the sum they had settled for. The cheques were to be picked up at PFN's office, where normally just Victoria, Norma, and Leanne would sit. They were concerned for their well-being based on the threat that had been reported to them, so they contacted the RCMP asking for someone to be present when the cheques are distributed. The RCMP had no one available to assign to this duty and recommended a private security firm be hired. Accordingly, PFN hired Griffin Security ("Griffin") to send a security officer to watch over the distribution process, which took place on February 25, 2016.

[146] A security officer was posted at the PFN office. According to the report Griffin prepared regarding this assignment, the RCMP had already contacted Mr. Ed, and he had "agreed to behave himself". The information Griffin had been given was that Mr. Ed "was known to be aggressive and violent, [an] avid hunter [with] access to firearms" and had threatened Chief and Council. The report states that Mr. Ed did indeed arrive that day to get his cheque and was given "instructions" on how to conduct himself. It says Mr. Ed was agitated, noting that the RCMP had already spoken to him. He went to the PFN office and picked up his cheque without incident.

[147] As things turned, it seems fairly clear that Mr. Ed was not a real threat to Chief and Council. Several of the witnesses called by the Estate testified that Mr. Ed was not a violent person. However, I also have no evidence before me to suggest that the alleged threat had

not actually been conveyed to Victoria. Given the information that Swede gave Victoria, it was not unreasonable for her to have contacted the RCMP, which in turn led to the hiring of the security firm for the day.

[148] The Estate filed statements written out by Mr. Kipp and signed by Swede in March 2016, in which the latter stated that Victoria had provided funds to him. The Estate contends that Victoria was buying his vote. PFN filed an affidavit signed by Swede before a notary public in November 2019 declaring that he refuted the 2016 statements and that the sum he received from Victoria was a loan to buy a car. Whatever Swede's interactions with Victoria may have been, they have no bearing on the uncontradicted evidence of the Chief and Council members and, to some extent, Griffin that Swede reported Mr. Ed's alleged threats to Chief and Council, who in turn acted upon the report.

[149] I do not view this incident as an exercise of a "standing order to harass" Mr. Ed, as the complaint alleges. Indeed, it is hard to imagine that any "standing order" existed given the evidence that over the years Mr. Ed regularly would come to the PFN reserves from his home in Seabird to fish without any problem. There is certainly no evidence from this Kinder-Morgan cheque incident that Mr. Ed's status as a Family A member was a factor. Chief and Council's reaction could reasonably have been the same had anyone made the alleged threat.

[150] For all these reasons, I am not persuaded on a balance of probabilities that Mr. Ed was forced to leave the 2016 membership meeting, as he alleges in his complaint, or that there was a standing order to harass him.

### **(iii) The Seabird Settlement distributions**

[151] The Estate contends that the failure to provide certain Seabird Settlement distributions to the Estate after Mr. Ed's death was in retaliation for his having filed this human rights complaint and an ongoing denial of service to him based on his family status and age.

**(a) The three unpaid \$3,000 instalments**

[152] Canada made its settlement offer in early November 2018, and Chief and Council adopted a BCR accepting it on November 11, 2018. The settlement amount was for over \$21 million. To be implemented, the agreement (the “Seabird Settlement Agreement”) required ratification by PFN’s membership. An information meeting was held in April 2019 to review the offer. Following up on the meeting, a referendum was held on May 9, 2019, ratifying the Seabird Settlement Agreement.

[153] The next day, May 10, 2019, Chief and Council passed a BCR directing that, when the funds from Canada are received, \$1 million would be deposited to PFN’s general operating account for distribution to membership and to support ongoing legal expenses. The remainder of the funds would be held in escrow for investment.

[154] Of relevance to the issue at hand, the BCR further directed that each registered PFN member on the membership list as of May 9, 2019, would be paid a distribution from the Seabird Settlement in the sum of \$12,000 to be paid in four equal instalments of \$3,000 each, on June 30, September 30, and December 9, 2019, and on March 30, 2020.

[155] Canada and Chief and Council did not end up formally signing the Seabird Settlement Agreement until August 13, 2019. As a result, the instalments could not begin being paid according to the schedule set out in the BCR. There was no evidence of any further BCR vacating the May 10 BCR and authorizing payments for the \$12,000 on new dates. Canada transferred the Seabird Settlement funds to PFN’s operating account on September 3, 2019. Mr. Ed had passed away in the meantime, on August 18, 2019. No instalments had been paid to him or anyone else by the date of his death.

[156] The first \$3000 instalment was only issued to members on or about November 26, 2019. The Estate received this payment. The evidence is not entirely clear, but it appears the second payment was also paid to members on or about this date. However, the Estate was not included in this distribution and did not receive the second or any other instalment.

[157] Norma testified that the decision not to pay any further instalments to the Estate was based on the advice of PFN’s band manager at the time, James Edwards. It is not clear

when Mr. Edwards was first hired by PFN, but he appears to have been in this role during the period when the Seabird Settlement was entered into and in the months thereafter. Mr. Edwards was not a PFN member nor a member of any of the PFN families.

[158] According to Norma, Mr. Edwards advised Chief and Council that, since Mr. Ed was alive in June 2019 when the first instalment was supposed to be made, the Estate was entitled to receive that payment. However, the Estate would not be entitled to receive any of the payments that were due to be paid after the date of his death. Mr. Edwards did not testify at the hearing.

[159] The Estate contends that PFN's decision not to pay the remainder of the instalments to the Estate was in retaliation for Mr. Ed having filed this complaint.

[160] As I mentioned earlier, to establish a claim of retaliation under s. 14.1, complainants must prove on a balance of probabilities that:

- 1) they previously filed a human rights complaint under the CHRA;
- 2) they experienced adverse treatment following the filing of their complaint from the person they filed the complaint against or anyone acting on their behalf; and
- 3) the human rights complaint was a factor in the adverse treatment.

[161] Proof of intention to retaliate is also not necessary, and the Tribunal may rely on a complainant's reasonable perception that the act was retaliation for filing a human rights complaint.

[162] Applying these criteria to the Estate's allegation, Mr. Ed clearly met the first requirement—he filed his human rights complaint with the Commission in January 2019.

[163] Did he or his Estate experience any adverse treatment? The Estate claims that Mr. Ed was entitled to receive his instalments effective May 9, 2019. He was still a registered band member at the time and on the membership list, having just voted in the referendum ratifying the Seabird Settlement Agreement.

[164] The BCR states explicitly that each registered band member on the membership list as of May 9, 2019, “**will** be paid a distribution of \$12,000 to be paid in four (4) equal instalments of \$3,000 each June 30<sup>th</sup>, September 30<sup>th</sup>, Dec 9<sup>th</sup>, and March 30<sup>th</sup>, 2020” [emphasis added]. Whatever Mr. Edwards’ opinion or advice to Chief and Council may have been, on its face, the BCR authorized payment of \$12,000 to Mr. Ed and every other registered member who was a member on May 9, 2019. According to the evidence before me, this BCR remained in force throughout the relevant time and, based on it, every other member duly received all four instalments. The denied payment of \$9,000 from that total sum clearly had an adverse impact on Mr. Ed’s entitlement under the BCR of May 10, 2019. His entitlement to the outstanding \$9,000 has now passed on to the Estate.

[165] Was the pending human rights complaint a factor in PFN’s denial of payment for that \$9,000? I find that it is reasonable for the Estate to perceive that it was.

[166] As I have just mentioned, it is evident that Mr. Ed was entitled to receive the sum—he was a registered member on the membership list on May 9, 2019, as specified in the BCR of May 10, 2019. PFN’s interpretation of the BCR’s provisions, whether Mr. Edwards’ or Chief and Council’s, is simply untenable.

[167] PFN’s erroneous interpretation of a BCR’s terms when administering the remaining payments is not in and of itself sufficient to find that Mr. Ed’s human rights complaint was a factor. I note, however, remarks in Norma’s evidence that make this conclusion probable or at the very least make the perception thereof reasonable.

[168] Norma maintained that Mr. Ed’s human rights complaint was not a factor in deciding not to pay the remaining instalments. She says Chief and Council relied on Mr. Edwards’ opinion. However, the human rights complaint had obviously drawn the attention of Chief and Council, and Norma in particular. When asked why Chief and Council did not consider providing Mr. Ed some information about certain government funding programs that emerged in 2019, Norma said she did not know, adding, “We were going to court to decide this human rights thing”. The complaint was clearly on Norma’s mind at the time.

[169] PFN pointed out that Norma and Victoria both attended Mr. Ed’s funeral and that PFN contributed to paying its cost. PFN argues that this militates against a finding of

retaliation. There was evidence, however, that ISC usually reimburses those expenses, meaning effectively that most members are entitled to such contributions. Furthermore, I do not see how attendance at a complainant's funeral negates the possibility that PFN unreasonably interpreted the BCR of May 10, 2019, out of frustration at having a human rights complaint filed against it.

[170] PFN argued that, since Mr. Ed had died, it would have been "detrimental" to PFN and its members to pay further instalments to the Estate, particularly given that the Estate's beneficiaries (Mr. Ed's wife and children) were not PFN members. I find this submission irrelevant. It was Mr. Ed who had the entitlement. It is of no consequence who or how his assets would be passed down after his death as part of his succession.

[171] Whether or not PFN or Chief and Council intended to retaliate against Mr. Ed's complaint, given Norma's reaction to the human rights complaint, I find it reasonable to objectively perceive that the complaint was a factor in the administrative decision to withhold funds that clearly, according to the BCR of May 10, 2019, were due to Mr. Ed or, after his passing, to his Estate.

[172] I therefore conclude that the denial of the last three \$3,000 instalments constitutes retaliation in respect of Mr. Ed's human rights complaint, within the meaning of s. 14.1 of the CHRA. The payment was a right to which Mr. Ed was entitled that was denied to him as a result of the discriminatory practice and must therefore be made available to the Estate.

[173] Having made this finding that the denial of the three payments constituted retaliation within the meaning of s. 14.1, there is no need to address the Estate's contention that it also constituted ongoing discrimination under s. 5.

**(b) The \$200,000 disbursement**

[174] As I mentioned, Canada transferred the Seabird Settlement funds to PFN in early September 2019.

[175] Norma testified that, upon the arrival of the funds, Mr. Edwards advised Chief and Council that PFN should adopt a formal policy for the distribution of the funds to members.

According to Norma, Mr. Edwards had experience managing similar funds for other First Nations.

[176] Accordingly, Mr. Edwards drafted the Distribution Policy, which he presented at a Chief and Council meeting held on October 1, 2019. On October 31, 2019, Chief and Council passed a BCR approving the Distribution Policy.

[177] The Distribution Policy set out the process by which distribution payments would be made to “Eligible Members” who were “Entitled Members” at the date of distribution.

[178] Mr. Ed and, by extension, the Estate, did not meet the criteria to receive the distribution payments of \$200,000, which were distributed in 2020, after PFN adopted the Distribution Policy by BCR. The Distribution Policy defined a “Member” as any PFN member registered on the “official Band Membership List”. Eligible Members were those who held a valid certificate of Indian Status. Eligible Members who completed a valid application to enrol in the distribution became Entitled Members. Mr. Ed ceased being a Member upon his death, which occurred months before PFN adopted the Distribution Policy. Consequently, he was not an Eligible Member at the distribution date.

[179] The Distribution Policy contains several provisions dealing with certain categories of Members (minors, patients in care, and absentee members). For instance, the distribution share for an Eligible Member who is a minor at the distribution date is held in trust for that minor until they reach the age of majority. A separate provision states that if the minor dies before reaching the age of majority, the minor’s distribution share is paid to the minor’s estate.

[180] However, there is no provision in the policy contemplating the payment of distribution shares to the estates of individuals who were not Eligible Members at the distribution date, like Mr. Ed.

[181] The Estate contends that Chief and Council effectively denied distribution payments to Mr. Ed through the adoption of this Distribution Policy in retaliation for his filing the human rights complaint and as part of PFN’s ongoing discrimination against him. Mr. Ed’s situation is unique. He was the only PFN member who was alive when the Seabird Settlement

Agreement was signed but who died before the Distribution Policy was adopted, meaning he is the only one in that cohort not to have received a payment. As such, the Estate argues that Mr. Ed was adversely impacted.

[182] I am not persuaded by the Estate's argument. Mr. Ed had no specific entitlement right to the \$200,000 distribution share when he died. PFN held the funds from the Settlement Agreement for the benefit of PFN as a whole. PFN had discretion over per capita distributions and had not decided to distribute the \$200,000 until after Mr. Ed's death. At the time of his death, Mr. Ed had no direct entitlement to any portion of the funds that ultimately comprised the \$200,000 payments. This contrasts with the \$12,000 disbursement to which Mr. Ed was entitled by virtue of having been a member on the specified date of May 9, 2019, in the BCR of May 10, 2019.

[183] The Estate argues that Mr. Ed's entitlement is rooted in the Seabird Settlement Agreement itself, particularly for Mr. Ed who was alive when Canada transferred the reserve land without consent in 1959, and, thus, he is, in a certain way, more entitled than others to the compensation from Canada.

[184] However, it is clear from the Seabird Settlement Agreement that Canada was providing the settlement funds to PFN as a First Nation. Members are defined in the Seabird Settlement Agreement, but only for the purposes of determining who would be entitled to participate in the ratification vote. The Seabird Settlement Agreement left it to PFN to deal with the funds as it saw fit.

[185] On this point, the Commission suggested I consider the Federal Court's reasons in *Shanks v. Salt River First Nation #195*, 2023 FC 690 [*Shanks FC*], for guidance regarding the interpretation of settlement agreements between Canada and a First Nation. *Shanks FC* held that the definition of a member as set out in the settlement agreement at issue in that case should inform which members were entitled to receive disbursements from the settlement funds. I note that the Federal Court of Appeal recently upheld *Shanks FC* (*Salt River First Nation #195 v. Shanks*, 2025 FCA 158 [*Shanks FCA*]). The issue on appeal related to jurisdiction. The findings in *Shanks FC* to which the Commission directed me were thus not impacted by the appeal decision.

[186] The facts in *Shanks FC* differ significantly from the present case such that I find the decision is not helpful in the present matter. *Shanks FC* was a judicial review of Salt River First Nation's decision by BCR to deny the complainant per capita distribution payments flowing from a 2002 treaty settlement agreement.

[187] The BCR limited distribution payments to persons who were members of Salt River First Nation on the date the treaty settlement agreement took effect in June 2002. The BCR was adopted pursuant to the First Nation's Revenue Account Law (the "Law"), which authorized its council to issue per capita distributions to all its members. The Law did not contain a definition of "member" but stated that the treaty settlement agreement's definitions would apply to any term not defined in the Law. The Federal Court found that the treaty settlement agreement did not restrict the meaning of "member" to those who were members in June 2002 and was broad enough to encompass members who were "enrolled" after that date. On this and other grounds, the BCR was found to be unreasonable and quashed.

[188] The present case differs from *Shanks FC* in that there is no similar provision found in any of the instruments that apply to the present case. Neither the Distribution Policy nor the BCR of October 31, 2019, similarly incorporate by reference any of the definitions in the Seabird Settlement Agreement. In contrast, the BCR of May 10, 2019, explicitly states that members as of May 9, 2019, will receive the payments it authorizes.

[189] The Estate contends that PFN could have included a special provision like the one regarding minors that would have enabled someone like Mr. Ed and the Estate to have an entitlement to the distribution. While PFN could have adopted a different Distribution Policy, they did not. When PFN distributed the \$200,000 and did not include the Estate, PFN was applying the Distribution Policy. Mr. Ed was not eligible for the \$200,000 distribution, so the fact that he or his Estate through him did not receive it was not an adverse impact on him or his Estate.

[190] Additionally, Norma gave evidence supporting the view that the approach PFN took to the distributions of \$200,000 was consistent with PFN's general practice. Norma pointed out that, as a practice, PFN does not distribute funds that it receives to members who had already passed away. She cited the example of her son and two nephews who died in a car

accident in March 2015, before the Kinder-Morgan settlement funds were distributed to PFN members. The three men had attended the Kinder-Morgan information meetings. Nevertheless, their estates did not receive any of the Kinder-Morgan distribution payments.

[191] The Estate points out that the Kinder-Morgan funds related to future works in contrast to the Seabird Settlement, which was intended to compensate PFN members for previous harm. I do not find this argument convincing. The fact is that the Seabird Settlement Agreement made no distinction and, in fact, dealt with the debt as being owed to the entire PFN as a First Nation, and not any member in particular.

[192] For these reasons, I do not find that the Estate experienced any adverse impact akin to the one regarding the \$12,000 disbursement. When Mr. Ed passed away, PFN had yet to decide what further distributions, if any, it would make to its members. There is no evidence that PFN ever had any intention to pay the estates of deceased PFN members retroactively.

### **C. Remedies**

[193] I have found to be substantiated the portion of the complaint alleging that PFN's failure to provide the remaining three Seabird Settlement disbursements of \$3,000 was in retaliation for the filing of this human rights complaint, within the meaning of s. 14.1 of the CHRA.

[194] Under s. 53(2)(b) of the CHRA, where a complaint is found to be substantiated, the Tribunal can order that the person who engaged in the discriminatory practice make available to the victim, on the first reasonable occasion, the rights, opportunities or privileges that were denied as a result of the discriminatory practice. In the present case, it was Mr. Ed's right and entitlement to the three disbursements that was denied. I order that they be paid to the Estate, since he has passed away.

[195] The Estate also sought an order under s. 53(2)(a) for a declaration that PFN cease its discriminatory conduct and develop a series of policies. The substantiated retaliation allegation only relates to the three outstanding payments of the \$12,000 disbursement.

There is no ongoing discriminatory practice beyond that. Consequently, an order under s. 53(2)(a) is not warranted.

[196] The Estate's request for an order under s. 53(2)(d) for expenses related to housing is not warranted either as that portion of the complaint was not substantiated.

[197] The Estate seeks compensation of \$5,000 under s. 53(2)(e) of the CHRA for Mr. Ed's pain and suffering. However, this provision states that the compensation can be ordered for any pain and suffering that **the victim experienced as a result of the discrimination**. Mr. Ed had already passed away when the discriminatory practice under s. 14.1 occurred. Therefore, he (the victim) could not have experienced the pain and suffering. An order under s. 53(2)(e) cannot be issued.

[198] The Estate argued that the Canadian Human Rights Tribunal ordered compensation for pain and suffering to the estates of deceased children in *First Nations Child & Family Caring Society of Canada v. Attorney General of Canada*, 2020 CHRT 7, citing para 130. However, at para 131 of that case, the Tribunal stated, "There is no doubt here that any deceased beneficiaries under the *Compensation Decision* Order actually experienced discriminatory impacts during their lives". The fact that Mr. Ed had passed away when the alleged discriminatory practice occurred under s. 14.1 distinguishes that decision from the situation here.

[199] The Estate also seeks the sum of \$5,000 under s. 53(3) of the CHRA. The Tribunal can order up to a maximum of \$20,000 in special compensation if it finds that the respondent has engaged in the discriminatory practice wilfully or recklessly (s. 53(3) of the CHRA). As noted in *Christoforou v. John Grant Haulage Ltd.*, 2021 CHRT 15 at paras 106–111, a finding of wilfulness requires an intention to discriminate and to infringe a person's rights under the CHRA. Recklessness usually denotes acts that disregard or show indifference to the consequences, such that the conduct is done wantonly or needlessly. A finding of recklessness does not require proof of intention to discriminate. In determining the appropriate award under this section, the Tribunal must focus on the respondent's conduct and not on the effect that the conduct has had on the complainants.

[200] Mr. Ed's entitlement to the whole sum of \$12,000 was clear. To have exercised discretion and denied his Estate payment at a time when the human rights complaint was pending and to which the denial could reasonably be linked shows recklessness and indifference. Taking all factors into account, I find that a sum of \$2,000 in special compensation is justified.

[201] The Tribunal can make an award of interest on an order to pay compensation (s. 53(4) of the CHRA). Although the Estate did not explicitly request an interest award in its submissions, it did ask the Tribunal to "consider adding to the remedies wherever [the Tribunal] home statute will allow". In the circumstances, especially considering that the Estate was not represented by legal counsel, I find it appropriate to include an award of interest.

[202] Rule 46 of the *Canadian Human Rights Tribunal Rules of Procedure, 2021*, SOR/2021-137 provides that interest awarded under s. 53(4) must be simple interest that is equivalent to the bank rate established by the Bank of Canada and must accrue from the day on which the discriminatory practice occurred until the day on which the compensation is paid.

[203] I order an award of interest on all the compensation ordered in this case. The interest for the special compensation (\$2,000) and the first two instalments (\$6,000) will accrue from November 26, 2019, which was when the second distribution instalment was paid to the members. The interest for the remaining \$3,000 will accrue from March 30, 2020, when the final instalment was distributed.

## **VII. ORDER**

[204] Within 30 days of this decision, PFN is ordered to pay the following to the Estate:

- a. \$9,000 in payment for the remainder of the distribution instalments;
- b. \$2,000 in special compensation (s. 53(3) of the CHRA).

[205] Simple interest will accrue from November 26, 2019, on the sum of \$8,000, and from March 30, 2020, on the sum of \$3,000, at a rate equivalent to the bank rate established by the Bank of Canada.

*Signed by*

Athanasios Hadjis  
Tribunal Member

Ottawa, Ontario  
September 25, 2025

# Canadian Human Rights Tribunal

## Parties of Record

**Tribunal File:** HR-DP-2903-22

**Style of Cause:** The Estate of Edward Peters v. Peters First Nation

**Decision of the Tribunal Dated:** September 25, 2025

**Date and Place of Hearing:** July 29-August 2, 2024, August 12-16,2024 and February 19,2025.

Chilliwack, British Columbia and by videoconference

### **Appearances:**

Darryl G. Kipp, for the Complainant

Sophia Karantonis, and Caroline Carrasco for the Canadian Human Rights Commission

Stan H. Ashcroft, for the Respondent