Canadian Human Rights Tribunal

Tribunal canadien des droits de la personne

Citation: 2025 CHRT 113
Date: December 8, 2025
File Nos.: T2673/4921 and T2674/5021

Between:

Christopher Coyne and Penny Way

Complainants

- and -

Canadian Human Rights Commission

Commission

- and -

Salt River First Nation #195

Respondent

Decision

Member: Athanasios Hadjis

Contents

I. OVERVIEW

[1] The Complainants, Christopher Coyne and Penny Way, are members of the Respondent, Salt River First Nation #195 (the SRFN). The SRFN distributes a sum of money annually to its members using funds generated from a settlement agreement it reached in 2002 with the Government of Canada ("Canada") regarding treaty rights. In 2017, the SRFN stopped making these distribution payments (known as Per Capita Distributions or PCDs) to Mr. Coyne and Ms. Way because they were not members in 2002.

[2] Mr. Coyne and Ms. Way claim that the reason they were not members in 2002 was because of their family status and age, which are prohibited grounds of discrimination under the *Canadian Human Rights Act*, R.S.C. 1985, c. H-6 (the CHRA). Therefore, they allege that the denial of PCDs to them is discriminatory.

[3] Ms. Way also claims that the SRFN's *Consolidated Election Code* (the "*Election Code*"), which prevents persons who were not members in 2002 from becoming Councillors or Chief, is discriminatory as well.

[4] Before the hearing into the complaints had ended, the SRFN circulated a one-page document to its members about the case (the "Notice to Members"). Mr. Coyne and Ms. Way contend that the Notice to Members was in retaliation to their complaints and thus an additional discriminatory practice by the SRFN against them.

II. DECISION

[5] Mr. Coyne's and Ms. Way's complaints regarding the PCDs are substantiated. Ms. Way's complaint about the *Election Code* is dismissed. The retaliation complaints are also dismissed.

III. ISSUES

[6] The Complainants allege that the SRFN engaged in the discriminatory practice set out in section 5 of the CHRA. Section 5 states that in the provision of services customarily

available to the public, it is a discriminatory practice to deny such a service to an individual or to differentiate adversely in relation to an individual, based on a prohibited ground of discrimination.

[7] I must decide the following issues regarding section 5 of the CHRA:

1) Is the provision of PCDs to SRFN members a service within the meaning of section 5?
2) Is the rule in the *Election Code* that prevented Ms. Way from being a candidate for Councillor or Chief a service within the meaning of section 5?
3) If the SRFN is providing a service, have the Complainants established that they were denied the service or adversely differentiated in that respect based on their family status or age?
4) If so, has the SRFN established a statutory defence?
5) If not, what remedies should the Tribunal order?

[8] The allegation of retaliation is based on section 14.1 of the CHRA. Section 14.1 provides that it is a discriminatory practice for the person against whom a complaint is filed under the CHRA to retaliate or threaten retaliation against the individual who filed the complaint. I must decide whether, in distributing the Notice to Members about the Complainants, the SRFN was retaliating against them for having filed their human rights complaints, and if so, what remedies should be ordered.

IV. BACKGROUND

[9] Mr. Coyne and Ms. Way each filed a human rights complaint against the SRFN, which is a “Band” within the meaning of the *Indian Act*, R.S.C. 1985, c. I-5. The SRFN’s reserve lands are located in and around Fort Smith, Northwest Territories. The SRFN is administered by a Council consisting of one Chief and six Councillors elected in accordance with the *Election Code*.

[10] Mr. Coyne was born in March 1971 in Fort Smith. His biological mother is a member of the SRFN. Shortly after his birth, Mr. Coyne was taken from his mother and placed in a

"receiving home," as a result of a process by authorities at the time that has come to be known as the Sixties Scoop. The following year, a non-Indigenous family adopted and raised him. As a result, he grew up away from his Indigenous culture, language, and customs. In 2011, Mr. Coyne sought to reconnect with his Indigenous heritage. He applied and obtained his "Indian Status" under the *Indian Act* and in 2012, registered as an SRFN member.

[11] Ms. Way was born in 1983 in Edmonton, Alberta. Her paternal grandmother had Indian Status but after marrying a non-Indian Status man, her grandmother lost her status and could not pass it on to her descendants. In 1985, Parliament enacted legislation to end this process called enfranchisement (*An Act to Amend the Indian Act*, S.C. 1985, c. 27 (Bill C-31)). Ms. Way's grandmother regained her status and her father became eligible to apply for Indian Status. He registered himself under the *Indian Act* in 1990 and in 1994 he was accepted as an SRFN member. However, Ms. Way could still not gain status until the *Gender Equity in Indian Registration Act*, S.C. 2010, c. 18 (Bill C-3) was passed in 2010, which enabled persons from the next generation like her to obtain Indian Status as well. She acquired her status in 2011, also as a member of the SRFN.

[12] In the meantime, the SRFN had settled a specific claim against Canada regarding treaty rights under Treaty No. 8 in 2002. A significant sum of money was placed into a trust for the benefit of SRFN members. In 2010, annual PCDs of up to $1,000 began to be paid to SRFN members. Mr. Coyne and Ms. Way were recipients of these PCDs for several years. However, following the adoption of a policy in 2016, the SRFN ceased providing the Complainants any PCDs from 2017 onwards. Council limited the distribution of PCDs to the 757 individuals who were registered SRFN members when the settlement with Canada was finalized on June 22, 2002, (referred to as the "Original Beneficiaries") or to the descendants of Original Beneficiaries born after June 22, 2002.

[13] Mr. Coyne and Ms. Way allege that these denials of payment are discriminatory. Mr. Coyne claims that the only reason he was not formally a member when the settlement agreement was finalized was because of his family status as someone who was adopted away from the community. Ms. Way contends that, but for her family status, linked to her grandmother's attributes (enfranchisement under the *Indian Act*, which was itself rooted in sex-based discrimination), she would have been a registered member in 2002 as well. Ms.

Way argues that the SRFN also discriminates based on age since the children of Original Beneficiaries born after June 22, 2002, receive distributions but those born before that date, like her, do not.

[14] Ms. Way made an additional related allegation about the fact that under the SRFN's *Election Code*, members who were not Original Beneficiaries or their biological descendants born after June 22, 2002, could not be candidates for election to the SRFN Council or be Chief.

[15] After the parties had presented their evidence and before they were scheduled to make their final arguments, the SRFN distributed the Notice to Members. Mr. Coyne and Ms. Way allege that it made adverse statements against them and was sent in retaliation to their human rights complaints. I allowed the Complainants to amend their complaints and include this additional allegation (*Coyne v. Salt River First Nation*, 2024 CHRT 11).

[16] The SRFN denies all the allegations. It claims that the Tribunal cannot deal with the complaints since what is at issue is not a service within the meaning of section 5 of the CHRA. Moreover, the SRFN argues that the criteria about who receives PCDs and qualifications under the *Election Code* are not related to family status. There are reasonable explanations and valid justifications for them. The SRFN also maintains that the Notice to Members was not in retaliation to the complaints.

[17] The Federal Court recently remarked in *Key First Nation v. Cote*, 2025 FC 1329 [*Key First Nation*] at paras 6–7, 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.

[18] This case involves similar terminology, and I have adopted the same approach as the Court in *Key First Nation*. I also do not intend any disrespect in the use of these terms.

V. LEGAL FRAMEWORK

[19] 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.

[20] Prohibited grounds of discrimination include family status and age (see section 3(1) of the CHRA).

[21] A two-step approach must be followed in adjudicating human rights complaints (*Commission des droits de la personne et de la jeunesse v. Bombardier Inc. (Bombardier Aerospace Training Centre)*, 2015 SCC 39 at paras 34-38 [*Bombardier*]; *SM v. Canada (Attorney General)*, 2025 FC 1893 at para 50) including the present complaint under section 5 of the CHRA. At the first step, the Complainants 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) that they experienced an adverse impact by being denied a service customarily available to the general public or access to it, or that they were adversely differentiated in the provision of such a service; 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 [*Moore*]; and *Bombardier* at paras 44–52).

[22] This is referred to as a *prima facie* case of discrimination. To assess whether the *prima facie* case has been proven, I must consider all the evidence, including the evidence presented by the SRFN to refute the Complainants' allegations (*Brunskill v. Canada Post Corporation*, 2019 CHRT 22 at para 64 [*Brunskill*]; and *Bombardier* at paras 58-59). The Tribunal must, after hearing all the evidence, be satisfied on a balance of probabilities that the Complainants have been discriminated against before it can decide in their favour (*Bombardier* at para 67).

[23] If the *prima facie* case is established, at the second step, SRFN can put forward a statutory defence to justify the discriminatory practice on the basis of the exemptions provided for in the CHRA or in jurisprudence (*Bombardier* at para 37). For instance, it will not be considered a discriminatory practice if the SRFN proves that there is a *bona fide* (good faith) justification for the denial or adverse differentiation in the provision of a service (s. 15(1)(g) of the CHRA). If the SRFN does not establish a justification, proof of the three *prima facie* elements on a balance of probabilities will be sufficient to conclude that it engaged in a discriminatory practice (*Bombardier* at para 64).

[24] The Complainants do not have to prove that the SRFN intended to discriminate against them (*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).

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

[26] 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* 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).

[27] Regarding the retaliation allegation based on section 14.1 of the CHRA, the Complainants must prove on a balance of probabilities that they previously filed a human rights complaint under the CHRA and that, after filing the complaint, they experienced an adverse impact from the SRFN's actions or anyone acting on its behalf.

[28] The Complainants must then prove that there is a connection between the filing of the complaints and the SRFN's alleged retaliatory actions that gave rise to the adverse impact. The previous complaints need not be the sole reason for the adverse impact. There need only be a link between the alleged act of retaliation and the enforcement of the Complainants' rights under the CHRA. While proof of intent to retaliate would obviously establish this link, the Complainants' "reasonable perception" that the act is retaliatory could also establish the link (*First Nations Child and Family Caring Society of Canada v. Attorney General of Canada (for the Minister of Indian and Northern Affairs Canada)*, 2015 CHRT 14 at paras 5, 7, and 11 [*Caring Society*]); and *Millbrook First Nation v. Tabor*, 2016 FC 894 at paras 63–64). The reasonableness of a complainant's perception is measured so as not to hold the respondent accountable for unreasonable anxiety or undue reaction by the complainant *(Wong v. Royal Bank of Canada*, 2001 CanLII 8499 (CHRT) at para 219).

VI. ANALYSIS

A. Issue 1: Is the provision of PCDs a service within the meaning of section 5 of the CHRA?

[29] There can only be a finding of discrimination under section 5 of the CHRA if the provision of PCDs is found to be a service customarily available to the general public. This is a threshold issue. Without the provision of a service within the meaning of section 5, there can be no finding of a discriminatory practice.

[30] For the following reasons, I find that the provision of PCDs is a service within the meaning of section 5 of the CHRA.

(i) What led to the issuance of PCDs?

[31] To determine if the provision of PCDs is a service, their origin must first be considered.

[32] The funding for PCDs arose from an agreement that the SRFN reached with Canada about a treaty signed in 1889 with the Chipewyan Indians of Slave River, which included the SRFN's ancestors (Treaty No. 8). Under this treaty, Canada made promises to provide land and certain ancillary benefits, which it did not follow through on for almost 100 years. Canada eventually agreed to negotiate the SRFN's Treaty Land Entitlement (the TLE) claim in the 1990s.

[33] The outcome of these negotiations was the Salt River First Nation Treaty Settlement Agreement (the TSA), which was finalized on June 22, 2002. The TSA states that Canada agreed to pay the SRFN $83,180,000 in compensation, which it placed in a trust fund that is governed by the Settlement Trust Agreement (the "Trust Agreement") appended to the TSA.

[34] According to the Trust Agreement, the trustee must transfer the annual income from the trust fund's accounts, less certain expenses, to another account called the Settlement Revenue Account, which is basically the SRFN's bank account.

[35] To enable the SRFN to begin issuing PCDs from the Settlement Revenue Account, SRFN members approved adding the SRFN *Revenue Account Law* (the "*Revenue Account Law*") to the *Election Code* in 2010. The *Revenue Account Law* provides for the issuance of PCDs from the income that the trust fund's accounts generate. The *Revenue Account Law* states that "… members of Council may permit a per capita distribution each fiscal year to all Members of the First Nation from the amount of annual income paid into the Settlement Revenue Account in that calendar year."

[36] The *Revenue Account Law* does not define the term "Members." It states that any undefined terms have the same definition as set out in the TSA. The TSA states that the terms Member and Member of the Band have the same meaning as in the *Indian Act*. Under section 8 and following of the *Indian Act*, Indigenous Services Canada (the ISC) maintains

"Band Lists" (that is, the membership lists of Bands), unless a Band assumes control of its membership by referendum. The SRFN held two such referendums in 2014 and 2015 but did not meet the required threshold set out in section 10 of the *Indian Act.* Consequently, the ISC continues to control the SRFN's membership list.

[37] Incidentally, the ISC, as a government department, has had several different names over the years. For simplicity, I will refer in this decision to all iterations of the organization as the "ISC."

[38] In November 2010, the SRFN's Council passed the first Band Council Resolution (BCR) authorizing a PCD to "every member on the most up to date Salt River First Nation band list managed by [ISC]". The PCD in that year was $584. PCDs continued to be issued by BCR every year (for instance, in 2013 - $584; 2014 - $625; 2015 - $700; 2016 - $800; 2017 - $900; 2018 - $1,000; 2019 - $750; 2020 - $800; 2021 - $800; 2022 - $1,000).

(ii) Why the Complainants stopped receiving PCDs

[39] On November 14, 2013, Council passed a BCR approving the PCD for 2013 in the amount of $584. However, it specified that the payments would be made to "those members who were beneficiaries and descendants of those beneficiaries of the [TSA] at the time it was signed in 2002."

[40] On November 27, 2013, Ms. Way received a letter from the SRFN signed by the Chief regarding the 2013 PCD payments. The letter advised her that she was not an SRFN member or a descendant of a member when the TSA was signed and consequently, she was not entitled to a PCD payment. The Chief claimed that the SRFN was negotiating with Canada for more lands and monies in trust for individuals like her who became members after the TSA was signed.

[41] Ms. Way was very upset when she received the letter. Her father was a member when the TSA was signed, and she was obviously his descendant. She telephoned the Chief for an explanation. Ms. Way testified that the Chief told her that "well, everyone is a descendant of a member."

[42] Several months later, on April 9, 2014, Ms. Way received another somewhat different letter from the SRFN signed by the Chief and four Councillors. The letter stated that the addition of new members like her to the membership list administered by the ISC had the effect of "diluting" the value of the original trust funds on a per capita basis. However, Council had decided, "after much thought and deliberation," to provide PCDs to all "previously affected" members, rather than wait for the outcome of negotiations with Canada for additional funding. Ms. Way's PCD cheque for 2013 was enclosed with the letter, which was being provided to her "on the same basis as other SRFN members who received their payment in December 2013."

[43] The letter concluded by saying to Ms. Way: "We welcome you as a full member of [the] SRFN." Ms. Way testified that she was pleased with this closing comment and assumed that the SRFN had figured out she was a descendant of an Original Beneficiary. She felt happy about being a full member.

[44] Mr. Coyne testified that he could not recall if he received similar letters from the SRFN.

[45] Despite this last letter to Ms. Way, the issue about PCD entitlement was still not closed for the SRFN.

[46] On November 7, 2016, a Special Meeting of SRFN members (the "Special Meeting") was held in Fort Smith, which Council had convened to discuss a "Motion regarding the protection of [the] TLE claim." The motion was passed by a vote of 41 members present and in favour with no one opposed or abstaining. The number of persons present met the *Election Code*'s membership meeting quorum requirement of 40. Of note, at the time of the hearing, about seven years later, the total number of SRFN members was 1048, but only 237 were living in Fort Smith, which is a relatively remote community situated just north of the Albertan border. There is no evidence to suggest the number of members living in Fort Smith was significantly different at the time of the Special Meeting.

[47] Ken Laviolette ("Mr. K. Laviolette"), an Elder who was a Councillor at the time and who had been on the team that negotiated the TSA, was called as a witness by the SRFN. He testified that with the passage of Bills C-31 and C-3 entitling more people to obtain Indian

Status, Canada added many individuals to the SRFN's membership list. As of 2017, about 145 members had been added. Council was concerned about the impact that their addition would have on the trust funds and the possible dilution of the benefits derived therefrom. Mr. K. Laviolette pointed out that the compensation agreed to in the TSA was calculated on the basis of the number of members on the membership list in June 2002 (757 members). The SRFN's negotiators had sought additional compensation and reserve lands from Canada to account for the anticipated increase in membership, but Canada refused. Mr. K. Laviolette claims that efforts were made in the years after the TSA was finalized to obtain additional compensation from Canada, but that was to no avail. The TSA was signed in full and final settlement of the SRFN's claim for ancillary benefits relating to Treaty No. 8.

[48] Council's concerns were discussed at the Special Meeting and the following resolution was passed:

> BE IT THEREFORE RESOLVED that the Membership of Salt River First Nation direct our elected Council to take every step necessary to protect and preserve the land and the trust fund established based on the original 757 beneficiaries (the TLE) and stop dilution of the benefits of the TLE, **including stopping payment of any future PCDs, to anyone on our Membership list who is not either an original beneficiary or a descendant of an original beneficiary**.
>
> [emphasis added]

[49] The same day, following the Special Meeting, the SRFN's Council passed a BCR, which states in part:

> WHEREAS at a Special Meeting of SRFN Members on November 7, 2016 in Fort Smith, a majority of Members present directed SRFN Council to take every step necessary to protect and preserve the land and the trust fund established based on the original 757 beneficiaries (the TLE) and stop dilution of the benefits of the TLE, **including stopping payment of any future PCDs, to anyone on our Membership list who is not either an original beneficiary or a descendant of an original beneficiary** (Meeting Agenda, Motion, and Record of Vote attached).
>
> THEREFORE BE IT RESOLVED that SRFN Council accepts and adopts the direction from Membership passed at the November 7, 2016 Special Meeting in Fort Smith, and shall apply this direction to all future expenditures from the Settlement Trust.

[emphasis added]

[50] The SRFN refers to this resolution as the *Dilution Prevention Policy* (the "*Policy*").

[51] The following year, on October 23, 2017, Council passed a BCR authorizing the 2017 PCD of $900 per "Beneficiary Member." One week later, on October 30, 2017, a letter signed by the Chief and all the Councillors was sent to what the text referred to as the "145 persons who Canada had added to [the SRFN] membership list who are not descendants of the beneficiaries of the TLE." This included the Complainants. The letter informed them of the motion passed at the Special Meeting of November 7, 2016, and explained that Council had "made the decision" that no PCD shall be paid to members unless they are one of the Original Beneficiaries of the TLE or a descendant.

[52] The letter told the Complainants that since their names were added to the membership list after June 2002, and they are not descendants of the Original Beneficiaries, they would not receive a PCD in 2017.

[53] On October 25, 2018, Council passed a BCR authorizing the SRFN "to pay a 2018 PCD payment to Beneficiary Members" of $1,000. However, on November 22, 2018, Council repealed this BCR and replaced it with a new BCR that referred to the 757 members on the date when the TSA was finalized as "Original Members." The BCR stated that PCDs would be paid that year to "each Original Member and to each descendant of an Original Member born after June 22, 2002." This is the first time that this cut-off date was explicitly mentioned in any of the BCRs regarding the issuance of PCDs.

[54] In the ensuing years (2019, 2020, and 2021), BCRs were adopted authorizing a PCD "to each Original Member and to each descendant of an Original Member born after June 22, 2002." The 2022 BCR authorized the issuance of a $1,000 PCD to "each Original Member and to each descendant of an Original Member born after June 22, 2002, whose names are on the SRFN member list from [the ISC] as of November 2, 2022." Any BCRs after 2022 regarding PCDs were not put in evidence, but as of the hearing, the Complainants confirmed that they had not received any PCD after 2016.

(iii) The provision of PCDs is a service, not a direct application of legislation

[55] The “services” referred to in section 5 of the CHRA mean something of benefit that is being held out as services and offered to the public (*Watkin v. Canada (Attorney General)*, 2008 FCA 170 at para 31). As noted in *Lock v. Peters First Nation*, 2023 CHRT 55 at para 55 [*Lock*], a public authority provides services where its activities meet a need or want that people have in society, or where it assists them with the accomplishment of a goal or objective. The public is defined in relational, not quantitative, terms, and the public relationship is to be determined by examining the relevant factors in a contextual manner (*Gould v. Yukon Order of Pioneers*, 1996 CanLII 231 (SCC) at para 68).

[56] In the present case, the SRFN’s Council and SRFN members are clearly in a public relationship, particularly regarding the TSA. The Trust Agreement in the TSA states that the sums paid by Canada to the Settlement Trust, which are ultimately managed by Council, are intended to benefit the SRFN, that is, its membership.

[57] The PCDs that Council issues are specifically of benefit to this public. The PCDs help SRFN members meet their needs and wants. For instance, several witnesses testified that PCD payments, which typically are issued shortly before Christmas, help members to purchase gifts, pay bills, buy winter clothes, and fulfill other needs at that time of year.

[58] Thus, by this measure, the provision of PCDs would appear to be a service within the meaning of section 5 of the CHRA.

[59] The SRFN disagrees. It contends that the PCDs are issued as a direct application of its laws or legislation and, as the Supreme Court of Canada confirmed in *Canada (Canadian Human Rights Commission) v. Canada (Attorney General*), 2018 SCC 31 at paras 5–6 [*Matson*], legislation is not a “service” that can be challenged or attacked under section 5 of the CHRA. The SRFN submits that the payment of PCDs is a matter that is governed by a combination of its laws, which it submits includes the *Revenue Account Law* and the *Policy*, adopted by BCR, which together the SRFN referred to in its submissions as the “PCD Laws”.

[60] The SRFN states that the PCD Laws are custom laws enacted pursuant to the law-making capacity of a First Nation, which exist independently of any delegation of power from the Canadian legal system. (*George v. Heiltsuk First Nation*, 2023 FC 1705 at paras 28-29, 65). The protection for customary laws and traditions is reflected in the *Act to Amend the Canadian Human Rights Act*, S.C. 2008, c. 30, at s. 1.2, which provides that the CHRA must be interpreted and applied in a manner the gives due regard to First Nations legal traditions and customary laws, particularly the balancing of individual rights and interests against collective rights and interests.

[61] The SRFN points out that Indigenous Peoples have an inherent right to self-government that is protected by section 35 of the *Constitution Act, 1982* (*Renvoi à la Cour d'appel du Québec relatif à la Loi concernant les enfants, les jeunes et les familles des Premières Nations, des Inuits et des Métis*, 2022 QCCA 185 at paras 363–364). This right is also recognized in the *United Nations Declaration of the Rights of Indigenous Peoples Act*, S.C. 2021, c. 14. Accordingly, the SRFN asserts its inherent right to control its own customs and adopt its own laws. The SRFN submits that the application of the CHRA to its laws would not only be an impermissible attack on its legislation but also a general infringement of its right to self-government.

[62] When Mr. K. Laviolette began referring to Section 35 during his testimony in chief, the Commission raised an objection, nothing that the SRFN did not serve any Notice of Constitutional Question (NCQ) challenging the constitutional validity, applicability, or operability of the CHRA, pursuant to Rule 25 of the *Canadian Human Rights Tribunal Rules of Procedure, 2021*, SOR/2021-137, [*Tribunal Rules*]. SRFN's counsel explained in response, however, that the service of a NCQ was not necessary. SRFN was not seeking a "declaration of invalidity or anything regarding the CHRA, (…) the *Indian Act*, [or] a declaration of the breadth and nature and scope of SRFN's rights". Rather, SRFN was merely "saying that the interpretation of service [under section 5 of the CHRA] must be informed by SRFN's rights." In other words, that as a self-governing First Nation, it has adopted laws that cannot be considered services within the meaning of section 5 of the CHRA, as was held in *Matson* regarding the laws of Parliament.

[63] I advised SRFN that if the circumstances of this case were caught by Rule 25 of the *Tribunal Rules*, SRFN could file its NCQ at a later time, within the prescribed delays. However, no NCQ was ever filed. I retain from this fact and from SRFN's declarations at the hearing that SRFN is not challenging the constitutional validity, applicability, or operability of the CHRA to this case. Rather, as it stated at the hearing, SRFN's position is that its laws, and particularly the PCD Laws, do no not constitute a service within the meaning of section 5 of the CHRA, for the same reasons as articulated in *Matson* with respect to the laws of Parliament.

[64] The Commission counters that the Complainants are not challenging the PCD laws but the **way** that they are being applied (*Lock* at para 126). A complaint about the exercise of discretion by an authority in the application of legislation is not an attack on the legislation (*Beattie v. Aboriginal Affairs and Northern Development Canada*, 2014 CHRT 1 at para 100).

[65] I note that every decision taken by Council to issue PCDs is discretionary. The *Revenue Account Law* says, at section 3(a), that members of Council "**may permit** [emphasis added]" a PCD each fiscal year to "all Members of the First Nation" from the amount of annual income paid into the Settlement Revenue Account in that calendar year, subject to maximum limits defined in section 3(b). In the letter informing Ms. Way that she would receive the 2013 PCD, the SRFN wrote that Council had decided, "after much thought and deliberation," to provide PCDs to all previously affected members. Similarly, the letter that the SRFN sent on October 30, 2017, said that Council had "made the decision" not to pay PCDs to members unless they are one of the Original Beneficiaries of the TLE or a descendant.

[66] Thus, Council clearly has discretion on whether to issue PCDs and in what amount. It has continuously varied the sums paid out over the years. Moreover, it has exercised its discretion in selecting whom to pay the PCDs to, including deciding to cease providing PCDs to the Complainants and others like them.

[67] Furthermore, Council used its discretion to add the 2002 birth date criterion, even though the *Revenue Account Law* makes no distinction between the type of members who

are entitled to receive PCDs. The *Revenue Account Law* incorporates by reference the TSA's definition of a member, which encompasses all persons on the ISC's membership list, including Mr. Coyne and Ms. Way.

[68] As for the *Policy*, the Commission submits that it is not an SRFN law, but simply a "direction" that Council adopted in a BCR. Council can change it at any time with another decision by BCR without consulting the membership, in contrast to the TSA and *Revenue Account Law*, which were adopted with a vote of the membership. In *Knibb Developments Ltd. v. Siksika First nation,* 2021 FC 1214 at para 10, the Federal Court held that a BCR is simply the expression of the will of a First Nation's Council. In contrast to a by-law made pursuant to section 81 of the *Indian Act*, a BCR usually cannot create rights and duties for members of the First Nation or third parties. As such, the Commission contends that the *Policy* is not a law or legislation of the SRFN.

[69] The SRFN counters that the *Policy* was adopted by BCR right after a membership vote at the Special Meeting that represented the consensus of the membership, and which Council had to follow and implement. Ms. Way notes, however, that two of her witnesses, Jeannie Marie-Jewell and Henry Beaver, testified that at a members meeting held in 2019, a contrary motion was passed declaring that all members must be paid PCDs. Ms. Way suggests that this contradicts the SRFN's claim of consensus among members to restrict the distribution of PCDs. However, no minutes of this meeting were entered into evidence and the SRFN pointed out that Ms. Marie-Jewell was in litigation against it when she testified, which could call into question the weight of her evidence. The Commission nonetheless also points to the low turnout at the Special Meeting, amounting to about 5% of the membership barely constituting quorum, as well as the inadequate notice to members about the Special Meeting, which I elaborate on later in this decision, to argue the lack of any consensus.

[70] In any event, even as an SRFN law, the *Policy*'s terms clearly cannot be read on their face as excluding the Complainants as beneficiaries. Although the *Policy* refers to "Original Beneficiaries" and their descendants, it makes no distinction or mention of persons born after June 22, 2002. The Complainants are unquestionably descendants of Original Beneficiaries. Mr. Coyne's mother and Ms. Way's father were both SRFN members in 2002.

As such, the Complainants fall squarely within the terms of the *Policy* as persons entitled to receive PCDs.

[71] When Council decided to create and add another criterion (descendants born after June 22, 2002) with the effect of denying them PCDs, it was in exercise of its discretion, not a simple application of the *Revenue Account Law* or the *Policy*.

[72] Mr. K. Laviolette and other witnesses called by the SRFN claimed that it was always understood when the TLE was negotiated that the settlement was for Original Beneficiaries and their issue born after June 22, 2002. Yet, there is no such distinction mentioned in the TSA, the Trust Agreement, or any of the other documents relating to the TLE. The SRFN maintains that it always intended to pass a membership code to reflect this distinction. However, the fact is that the referendums for a new membership code never reached the required threshold, and it had never been brought into force.

[73] The SRFN similarly submits that at least within Council and perhaps among the 41 people who voted at the Special Meeting, the June 22, 2002, limitation was implied. Nevertheless, there is no mention of such a criterion in the Notice convening the Special Meeting, which contained a copy of the proposed motion, nor in the resolution that was adopted at the Special Meeting. The condition is also not mentioned in the BCR adopting the *Policy*, the *Revenue Account Law*, or even in the BCR of October 23, 2017, approving the PCD for that year. The Commission also questions how the SRFN saw fit to pay all members PCDs, including Ms. Way and Mr. Coyne, until 2016, if there was such an implied distinction.

[74] The date-based criterion came about due to a decision by Council first exercised without any formal mention in 2017, and then explicitly articulated and applied in 2018. The source of the denial of PCD payments to the Complainants was this exercise of discretion. An authority's exercise of discretion is a key indicator that a service is being provided as opposed to merely implementing pre-existing legislation.

[75] A similar situation arose in *Lock*. The issue was whether the processing of membership applications pursuant to the First Nation's membership code was a service. The Tribunal determined that, based on the discretionary manner that the First Nation in that

case chose to apply its membership code, it provided a service within the meaning of section 5 of the CHRA. The Tribunal found that one of the ways that the First Nation's council exercised discretion when it processed membership requests was by adding criteria for membership not found in the First Nation's membership code, nor in its customary law. These additional criteria included factors such as age limits and the history of enfranchisement. There was no disguised attack on the membership code itself.

[76] Similarly, the SRFN's Council exercised its discretion every time it made a decision to issue a new PCD and, more specifically, every time it added a member's date of birth as a criterion to receive a PCD. As such, the complaints about these Council decisions are not an attack on the SRFN's laws, even if the *Policy* is among those laws.

[77] Besides, there remains one major additional problem regarding the *Policy* that bears mentioning. The Federal Court has held that the distinctions that the SRFN made, as expressed in the *Policy* and the post-2016 BCRs, between Original Beneficiaries and other members, are unreasonable and not consistent with the TSA or the *Revenue Account Law*.

[78] In *Shanks v. Salt River First Nation #195*, 2023 FC 690 [*Shanks FC*], an SRFN member (Richard Shanks) who for similar reasons as Ms. Way, was only able to gain Indian Status in 2012, sought judicial review of the Council's BCR of October 26, 2021, authorizing payment of PCDs only to "Original Members" and descendants born after June 22, 2002. The Court noted, as I also observed earlier in this decision, that the *Revenue Account Law* and the definitions of the term "Member" as incorporated by reference from the TSA, make no distinction between persons who were members in 2002 and those who were registered later. Accordingly, the Court found that the Council's interpretation that the TSA funds were only intended for the benefit of "Original Beneficiaries" and their descendants is unreasonable. The Court set aside the 2021 BCR.

[79] The SRFN appealed *Shanks FC*, but solely on the issue of whether the Federal Court had jurisdiction to deal with the case. No appeal was brought from the Federal Court's decision that Council acted unreasonably when it passed the BCR (*Salt River First Nation #195 v. Shanks*, 2025 FCA 158 at para 4 [*Shanks FCA*]). Consequently, the findings of *Shanks FC* in this regard are unaffected by the appeal and remain applicable. In any event,

the appeal was dismissed. The SRFN was obviously aware, when it made its final arguments in the present case in April 2025, that it had not challenged *Shanks FC*'s findings regarding the *Policy* and the membership distinctions that it had created.

[80] It follows from the reasons in *Shanks FC* that the *Policy*'s distinctions in the BCRs at issue, between types of members are based on an unreasonable interpretation of the TSA and the *Revenue Account Law*. It would be equally unreasonable in the present case to accept the argument that the BCRs adopted since 2016 are mere implementations of SRFN laws when the BCRs are based on an interpretation of those instruments that the Federal Court has declared to be unreasonable. It would mean that Council had appropriated a discretion that the *Revenue Account Law* and even the *Policy* had not conferred to it.

[81] The SRFN submits, as an additional argument, that the PCDs are governed by private law principles, which include the requirement that the trustee act in accordance with the terms of the trust instrument. The SRFN points out that the funds in the Settlement Trust are not "Indian Moneys" within the meaning of the *Indian Act* and are not governed by that Act. The SRFN contends that each time Council decides to pay a PCD out of the Settlement Trust income, it creates a trust to benefit the Original Beneficiaries and their descendants. The SRFN claims that these decisions to authorize PCDs arise out of the private law of trusts covering personal property, which is a discretionary decision not shaped by public law and not subject to review by the courts. It is a private discretionary decision that similarly does not constitute a service within the Tribunal's jurisdiction.

[82] The same private trust argument was rejected by the Federal Court in *Shanks FC* at para 40, a finding that *Shanks FCA* at paras 28–29 did not find to be in error. Therefore, I conclude that this additional SRFN argument is unfounded.

[83] To summarize, I find that the PCDs authorized and issued by the SRFN are something of benefit to its general public (the SRFN members) and as such, the provision of PCDs is a service within the meaning of section 5 of the CHRA. The decision to issue the PCDs by BCR each year is not a simple implementation of SRFN laws, but rather an exercise of discretionary authority by the SRFN's Council.

B. Issue 2: Is the *Election Code* rule that prevented Ms. Way from being a candidate a service within the meaning of section 5 of the CHRA?

[84] No.

[85] In 2015, section 35A was added to the *Election Code*. The provision effectively states that only Original Beneficiaries and their "biological descendants" born after June 22, 2002, can seek nomination as candidates for the positions of Chief or Councillor.

[86] Therefore, Ms. Way was not eligible, which she claims is a discriminatory denial of one of her inherent treaty rights. Ms. Way did not associate a specific section of the CHRA with this alleged discriminatory practice, but she did refer to section 5 of the CHRA generally in her Statement of Particulars. Accordingly, as with the PCDs, Ms. Way must first establish that her ineligibility as a candidate under section 35A of the *Election Code* was a denial or adverse differentiation in the provision of a **service** within the meaning of section 5 of the CHRA.

[87] The SRFN argues that Ms. Way's complaint is not about a service. She is challenging a section of a valid SRFN law, the *Election Code*. As was held in *Matson*, legislation does not fall within the meaning of service under section 5 of the CHRA and, as such, the Tribunal has no authority to address this part of Ms. Way's complaint. The Commission concurs with the SRFN.

[88] I agree as well. Direct challenges to clear and unambiguous wording in a First Nation law do not fall within the meaning of services under section 5 of the CHRA.

[89] Had there been some exercise of discretion in applying the law and arriving at the result being challenged, it could be argued that SRFN engaged in the provision of services. However, there is no discretion in the mandatory eligibility rules for candidacy. The entitlement is determined by the criteria themselves. The appropriate way to directly attack mandatory entitlement provisions in legislation is by way of a challenge under the *Canadian Charter of Rights and Freedoms* (the *"Charter*") that is brought to a court. In *West v. Cold Lake First Nations*, 2021 CHRT 1 at para 146, a similar case involving a First Nation member's entitlement to run under mandatory eligibility criteria in the community's election

law, the Tribunal concluded that the right forum for this type of challenge is the Federal Court.

[90] In her final submissions, Ms. Way alluded to the equality provisions set out in section 15 of the *Charter* to support her claim that section 35A of the *Election Code* is discriminatory. She cited a decision from the Federal Court (*Collins v. Saddle Lake Creek First Nation #462*, 2023 FC 1239) where similar provisions in that First Nation's election law were successfully challenged. However, that case was brought in the proper forum—the Federal Court, not the Tribunal, as *West* noted.

[91] Ms. Way also claimed in her final submissions that section 35A of the *Election Code* was in violation of section 10 of the CHRA. Aside from the fact that Ms. Way had never alleged a breach of section 10 in her previous pleadings, this provision clearly does not apply to this matter. Section 10 addresses discriminatory practices in employment. Being nominated for election and serving as the SRFN's Chief or Councillor is not an employer-employee relationship. Section 10 does not apply.

[92] In sum, Ms. Way's allegations regarding section 35A of the *Election Code* do not involve the provision of a service within the meaning of section 5 of the CHRA. The Tribunal has no authority under the CHRA to address this portion of her complaint.

[93] On August 20, 2025, several months after the parties had presented their final submissions, the SRFN's counsel sent a letter to the Tribunal and the other parties explaining that effective August 8, 2025, the SRFN had repealed section 35A of the *Election Code* (since renamed the *Election Law*). According to the letter, there is no provision in the *Election Law* restricting candidacy to members who have otherwise been referred to as Original Beneficiaries or any other similar basis. This repeal has seemingly rendered Ms. Way's allegations moot as of August 8, 2025.

[94] This change nonetheless has no bearing on my findings regarding the unavailability of a recourse under section 5 of the CHRA.

C. Issue 3: Have the Complainants established a *prima facie* case that the denial of PCDs since 2017 was a discriminatory practice?

(i) Do the Complainants have characteristics protected from discrimination under the CHRA?

[95] Yes, the Complainants have the protected characteristics of family status and age within the meaning of the CHRA.

(a) Family status

[96] Family status has been given a broad meaning (see *Lock* at para 158). The ground encompasses complaints based on the particular identity of a family member, which is especially relevant to Ms. Way's situation (*B. v. Ontario (Human Rights Commission)*, 2002 SCC 66 at para 46; and *Tanner v. Gambler First Nation*, 2015 CHRT 19 at para 39). She was prevented from being on the membership list in 2002 because of her grandmother's attributes—the latter's enfranchisement. This inequity that Ms. Way's grandmother experienced meant that Ms. Way in turn was ineligible to obtain her Indian Status and membership in the SRFN until Bills C-31 and C-3 were in force, correcting prior gender-based discrimination in the *Indian Act*. Were it not for Ms. Way's family status as the granddaughter of someone who had been enfranchised, she would probably have been a registered SRFN member from childhood and certainly would not have been prevented from doing so prior to 2010.

[97] The Tribunal has also stated that family status includes the inter-relationship arising from family bonds of marriage, consanguinity, legal adoption, and "ancestral relationships whether legitimate, illegitimate or by adoption" (*Schaap v. Canada (Department of National Defence)*, 1988 CanLII 8859 (CHRT) at para 66), which is particularly relevant to Mr. Coyne's circumstances. He would have been fully recognized as an SRFN member by birth had he not been taken as an infant from his mother and adopted into a non-Indigenous family. In other words, but for his family status as a person who was adopted as an infant and raised away from his biological parent who was an SRFN member, he would have been a member in 2002. Indeed, Mr. Coyne testified that two of his siblings from the same mother

who were raised by her and not adopted away were on the membership list in 2002 and have never stopped receiving PCDs.

[98] The Complainants have thus established their unique family status situations relating to the SRFN.

(b) Age

[99] The criteria applied by the SRFN to determine which descendants are entitled to receive PCDs refer to June 22, 2002. Descendants of persons who were members on this date but who were born before do not receive PCDs. Ms. Way falls into this category, that is, she is older than the age of the descendants that are entitled to receive PCDs.

[100] Therefore, Ms. Way has established that her age is a personal characteristic in a manner that is relevant to this case. Mr. Coyne did not specifically raise age as a discriminatory ground in his complaint, though the findings about Ms. Way in this regard would also apply to him.

(ii) Did the Complainants experience an adverse impact?

[101] Yes. They both ceased receiving PCDs after 2016.

(iii) Were the Complainants' personal characteristics factors in the adverse impact?

[102] Yes, their family status and age were factors.

(a) Family status

[103] Were it not for Ms. Way's family status as the granddaughter of a member who was enfranchised from her Indian Status, she could have been a member from birth, and particularly by the time the TSA was signed in 2002. Her family status prevented her from becoming a member before the TSA was signed.

[104] As for Mr. Coyne, but for his family status as a person adopted away from his Indigenous family and community as an infant in the era of the Sixties Scoop, he would have been a recognized SRFN member from birth, just like his siblings who remained with his biological mother and were registered members when the TSA was signed.

[105] The SRFN argues that nonetheless, the Complainants' family statuses were not a factor in their not being entitled to PCDs. The distinction that Council made was simply based on a date in time—June 22, 2002, which is not an arbitrary date but the date of the TSA.

[106] In support of this argument, the SRFN referred in its final submissions to the decision in *Taylor v. Ginoogaming First Nation*, 2019 ONSC 328, which also dealt with the distribution of funds arising from a settlement agreement with Canada. The Ontario Superior Court confirmed that the individuals who became members after a specified date had no entitlements to a payment. However, the trust instruments in that matter explicitly limited the distribution of benefits to persons who were members as of a specific date. That is not the case here.

[107] Besides, the SRFN's claim that the denial of benefits was merely an unintended consequence of using the June 22, 2002, date is called into question by the evidence of its witness, Mr. K. Laviolette. He acknowledged that there was a specific intent to deny PCD benefits to persons like Ms. Way who only gained status after the discriminatory provisions of the *Indian Act* were repealed by Bill C-3. Mr. K. Laviolette had sat on Council at various times until 2014 and served as the SRFN's Chief Negotiator with Canada. He was at the Special Meeting, and he made the motion that the 41 members in attendance voted for, upon which the *Policy* was based. Mr. K. Laviolette was asked in cross-examination whether the *Policy* was "specifically created to exclude [Bill] C-3 people." His response was: "That is correct."

[108] As for Mr. Coyne, the SRFN points out that he could have opted to gain his Indian Status and become a member at any time prior to 2002. For instance, he has a brother who had also been taken from their mother and adopted by the same non-Indigenous family as

him. That brother applied for and obtained his Indian Status and SRFN membership before 2002 and consequently has always received PCDs.

[109] I am not persuaded by this argument either. Mr. Coyne would never have been in a position of having to apply for his Indian Status and SRFN membership were it not for the fact that he was adopted away from his birth family as an infant. As such, his family status was a factor in his not being a member when the TSA was signed, which was ultimately the reason he was denied PCD payments (in other words, the adverse impact).

(b) Age

[110] Age is clearly a factor in the denial of PCD payments. As of the year when Ms. Way was first denied a PCD (2017), any descendant of an Original Beneficiary who was older than 15 years old and who was not a registered member yet in 2002, such as Ms. Way, was denied PCD benefits. If Ms. Way's father had fathered another child after June 22, 2002, that new sibling would be entitled to PCD benefits, while Ms. Way would not because she was too old.

[111] The SRFN argues that there is no discrimination since overall, older members (such as Ms. Way's and Mr. Coyne's parents) as well as younger members born after 2002 receive PCDs. This argument does not address the real issue. A distinction is being made between two types of descendants of Original Beneficiaries, those that are younger, who receive PCD payments, and those that are older, like Ms. Way and Mr. Coyne, who do not. Therefore, age is a factor.

[112] Section 3.1 of the CHRA provides that discriminatory practices include practices that are based on more than one ground of discrimination. That is what is occurring here. But for the Complainants' family statuses, they would not have been excluded from the fabricated classification of Original Beneficiaries. By being so excluded, they find themselves too old to be included in the other category of beneficiaries, that is, younger descendants born after June 22, 2002.

[113] Thus, both alleged prohibited grounds of discrimination (family status and age) were factors in the denial of PCD payments to the Complainants since 2017.

[114] A *prima facie* case of discrimination has been established.

D. Issue 4: Has the SRFN established a statutory defence?

[115] No.

[116] The SRFN has raised two defences under the CHRA. The first is that there is a *bona fide* (or good faith) justification for the discriminatory practice (section 15(2) of the CHRA). As an alternate defence, the SRFN argues that the TSA is a "special program" within the meaning of section 16 of the CHRA and that its actions in application of the TSA are not deemed discriminatory because they are designed to prevent or reduce disadvantages that SRFN members experienced for over 100 years.

[117] Neither of the defences is substantiated.

(i) *Bona fide* justification

[118] The SRFN can avoid a finding of discrimination by establishing that there is a *bona fide* justification for its otherwise discriminatory practice (section 15(1)(g) of the CHRA). In other words, the SRFN must show that accommodating the Complainants' needs (such as providing them PCDs) would impose undue hardship on it considering health, safety and cost (section 15(2) of the CHRA).

[119] The Supreme Court's decision in *British Columbia (Superintendent of Motor Vehicles) v. British Columbia (Council of Human Rights),* 1999 CanLII 646 (SCC), sets out the general test for this defence, which when read with the specific terms of section 15(2), requires the SRFN to prove that:

> a) It adopted the standard for a purpose or goal rationally connected to the function being performed;
> b) It adopted the standard in good faith, in the belief that it is necessary for the fulfilment of the purpose or goal; and
> c) The standard was reasonably necessary, in the sense that it could not be relaxed without causing undue hardship considering health, safety, and cost. In assessing the third element, some hardship is considered acceptable.

[120] The SRFN failed to demonstrate that any of the three requirements were met.

(a) The SRFN's approach is not rationally connected to a legitimate purpose to the function being performed

[121] The "standard" in this case is the decision to only provide PCD payments to Original Beneficiaries and their descendants born after June 22, 2002. The justification advanced by the SRFN, as expressed by Mr. K. Laviolette and other SRFN witnesses, is that Council had to limit the scope of PCD distribution to preserve and protect the Settlement Trust for the benefit of the beneficiaries and as a function of its fiduciary duty to manage the SRFN's assets in the best interests of its membership.

[122] Jeff Fraser, who was interim co-Chief Executive Officer (co-CEO) of the SRFN when he testified, said that paying PCDs to the Complainants and other members like them would significantly diminish the return on the Settlement Trust's investments. He claimed that the SRFN would lose money every year and have to stop paying PCDs because "we would go broke."

[123] However, according to the TSA, there is no connection between the number of persons who receive PCDs each year and the preservation of the Settlement Trust's investments. As the Commission correctly pointed out in its final submissions, the Settlement Trust's fund balance (that is, the principal in the trust fund) is protected and will remain intact because of the structure of the trust set out in the TSA. Only the income generated annually from the money in the Settlement Trust is transferred to the Settlement Revenue Account, from which PCDs are paid out.

[124] Mr. Fraser made what amounts to a bald assertion in cross-examination that payment of PCDs to more members in a given year would affect the income generated by the Settlement Trust in future years without explaining how he came up with this assertion or calculation. The terms of the TSA and the *Revenue Account Law* are clear. No sums are ever taken from the principal in the Settlement Trust. The trustee is required to transfer all the annually generated income from the fund to the SRFN's Revenue Account, which the

SRFN can then distribute subject to additional restrictions such as a requirement that no more than 15 percent of the annual income can be used to pay PCDs.

[125] The SRFN argues alternatively that since it and Canada negotiated the TLE in 2002 on the implied understanding that the sum being paid was based on the 757 registered members at the time and the "generations yet unborn," it has a duty to preserve or basically not share any of that capital or the revenue generated by it with any other members, namely those who were registered afterwards. However, this argument is also unsupported by the facts. As *Shanks FC* held at paras 56–59 and as discussed earlier in my decision at paragraphs 35-36 and 78, no such specification or distinction of members is found anywhere in the TLE documents. Although the TSA compensation was calculated based on the SRFN's population at that specific point in time, the benefits were intended for the First Nation as a whole, without any distinction.

[126] Therefore, the SRFN has not established that there is a rational connection between the purpose of preserving the TLE's trust fund and limits on the number of PCD recipients.

(b) The SRFN did not establish that it believed in good faith that its standard was necessary to accomplish the stated purpose

[127] The SRFN claims that Council believed in good faith that it was necessary to stop paying PCDs to the Complainants and others like them to preserve the Settlement Trust funds. Aside from the fact that those funds would in fact not be impacted by including the Complainants as PCD recipients, which I addressed in the preceding section, there is evidence that the SRFN was not acting in good faith when making these decisions by ensuring that as few people as possible knew of Council's intentions for pursuing these decisions despite information that a substantial portion of the membership disagreed with its approach.

[128] For instance, Council convened the Special Meeting, which had an agenda that obviously would impact on the rights of dozens of members, without mailing notices to all the members. A notice was posted on the SRFN's Facebook page, and some paper notices were posted on bulletin boards around Fort Smith. The Complainants and Mr. Beaver

testified that they never saw the Facebook notice and did not know about the Special Meeting. The vast majority of SRFN members reside outside Fort Smith, mostly throughout western Canada, but some even overseas. Council did not make any arrangements for people to participate remotely by telephone or other means.

[129] As a result, only one more person than the minimal quorum requirement of 40 persons voted at the Special Meeting. The SRFN claims that based on that vote, Council deemed there was consensus within the membership and passed the *Policy* by BCR later that day. However, aside from the fact that Council viewed a vote of what amounts to about five percent of the membership was sufficient proof of consensus regarding an issue that would deny benefits to at least 145 members, there is no evidence in the Special Meeting's minutes of any discussion whatsoever about the additional limitation of benefits to persons born after June 22, 2002, which Council later added in the BCRs approving PCDs.

[130] Indeed, there is some evidence that a good number of SRFN members disagreed with this date-based distinction. For instance, one year after Council passed the BCR adopting the *Policy*, it made an additional attempt to limit the rights of the 145 so-called non-Original Beneficiaries. On October 26, 2017, Council called a referendum to amend the *Election Code* to deny these members the right to vote at any special budget meetings discussing how the annual income from the TSA trust funds is distributed. The referendum question stated explicitly that only descendants of Original Beneficiaries born after June 22, 2002, would be able to vote at these special budget meetings in the future. Sixty-eight percent of the 238 electors who participated in the referendum voted against the proposal. It did not pass. As Ms. Jewell noted in her testimony, the membership clearly articulated through this referendum that it did not approve of distinctions being made on the basis being proposed by Council.

[131] Yet, in the same month, despite this message from its membership, Council sent a letter to those 145 members, including Ms. Way and Mr. Coyne, telling them that they would be treated differently than other members from now on and no longer receive annual PCD payments.

[132] Furthermore, Council made a clearly misleading statement in the letter. It said that the SRFN was negotiating with Canada for additional TLE compensation, which once received would enable PCD benefits to be restored for those 145 members. In fact, there is very little evidence that any such discussions were ongoing at the time. The only documentary evidence about this topic is a letter that was sent to an ISC representative in 2022, raising the issue. Apparently, the ISC representative said that he would need to speak to more senior officials, but nothing has happened since.

[133] Finally, the Commission also submits that the SRFN's absence of good faith is demonstrated in its reaction to *Shanks FC* and the continued denial of PCD payments to the Complainants to this day. The Federal Court ordered that the 2021 BCR be set aside and that the SRFN reconsider the BCR with reference to the Court's reasons. This order at a minimum would have meant that the SRFN should have provided the 2021 PCD payments to the Complainants. It did not, and there is no evidence that the SRFN sought or obtained a stay of the Federal Court's order pending the appeal, which ultimately upheld *Shanks FC*.

[134] Despite all these indicators rejecting the approach adopted by Council, be it from the SRFN's own membership or from the courts, the SRFN has continued to deny PCD payments to the Complainants, which I have already determined to be a *prima facie* discriminatory practice.

[135] These elements all point to the absence of good faith in Council's adoption of the standard denying payments to accomplish the stated purpose of preserving the Settlement Trust funds, which is itself neither factually founded nor legitimate.

(c) No evidence of undue hardship

[136] The SRFN has not proven that it would experience any undue hardship based on health, safety, or cost, if it was required to pay the Complainants or the other 143 persons like them PCDs.

[137] As I have already noted, the claim that the trust capital would be impacted is completely unfounded.

[138] In its final submissions, the SRFN argued that accommodating the Complainants and the others like them would also "severely deplete the Settlement Trust income" for the Original Beneficiaries and their post-2002 descendants. It is true that there could potentially be an impact on the amount of each member's PCD payment each year.

[139] However, there is no evidence that any "severe depletion" of the trust income would result. During Ms. Marie-Jewell's testimony, a calculation was made based on the budgeted money that was available for distribution in 2019, which showed that hypothetically adding 150 members to the PCD distribution list could reduce each person's PCD by up to $200. This is not an insignificant amount, especially given the evidence that members have been applying their PCD benefits to pay for their needs around the end of the year. Ms. Marie-Jewell testified that the impact may be more significant for some members than for others. But there is no evidence that this imposes an **undue** hardship on the individual members.

[140] The SRFN managed to pay all its members PCDs from 2010 until 2016. There is no evidence that actual hardship for the SRFN, let alone undue hardship, came about because of those additional payments, nor for that matter was there any evidence of such an impact going forward.

[141] The SRFN referred in its submissions to the evidence of Brad Laviolette ("Mr. B. Laviolette"), who was acting Chief at the time of the hearing. He testified that eventually, the SRFN would need to hire more administrative staff to accommodate all the individuals "that Canada has been adding" to the membership list. It already has "capacity issues" and these administrative needs could potentially divert monies from the PCDs. However, it appears that this argument is centred more on the impact that the addition of new SRFN members will have in general to the community. That is not the question at issue in this case. The only relevant issue is the impact of including another 145 persons to the list of PCD recipients. According to the evidence, the distribution of PCDs was usually done through cheques that were often handed out at SRFN gatherings in the fall at various places including Edmonton. There is no evidence that issuing an additional 145 cheques would have caused any hardship, let alone undue hardship.

[142] Finally, the requirement in section 15(2) of the CHRA that the SRFN must demonstrate that accommodating the Complainant's needs of a complainant would impose undue hardship implies that there must have been no other options available to the SRFN short of the one that would cause it undue hardship. In other words, the SRFN must show that alternative approaches were investigated but ultimately were ruled out (*British Columbia (Public Service Employee Relations Commission) v. BCGSEU*, 1999 CanLII 652 (SCC) at para. 65; and *Moore* at para 49). However, the SRFN led no evidence of any efforts to explore other options. The only option considered was to simply block the Complainants' access to any PCD benefits. Even the SRFN's claimed attempts to seek additional funding from Canada seem at best meager, and there is no evidence that any serious efforts were made in that direction ahead of Council's decision to deny the benefits, or in the following years.

[143] For these reasons, the statutory defence under s. 15(1)(g) of the CHRA has not been established.

(ii) Section 16 defence

[144] The SRFN raised another defence to the *prima facie* case. It argued that the TSA constitutes a "special program" within the meaning of section 16(1) of the CHRA.

[145] Section 16(1) of the CHRA states that certain otherwise discriminatory programs may nonetheless not be considered a discriminatory practice if they are designed to reduce or eliminate disadvantages for some groups. The provision states as follows:

Special programs	**Programmes de promotion sociale**
16 (1) It is not a discriminatory practice for a person to adopt or carry out a special program, plan or arrangement designed to prevent disadvantages that are likely to be suffered by, or to eliminate or reduce disadvantages that are suffered by, any group of individuals when those disadvantages would be based on or related to the prohibited grounds of discrimination, by improving	**16 (1)** Ne constitue pas un acte discriminatoire le fait d'adopter ou de mettre en œuvre des programmes, des plans ou des arrangements spéciaux destinés à supprimer, diminuer ou prévenir les désavantages que subit ou peut vraisemblablement subir un groupe d'individus pour des motifs fondés, directement ou indirectement, sur un motif de distinction illicite en

opportunities respecting goods, services, facilities, accommodation or employment in relation to that group.	améliorant leurs chances d'emploi ou d'avancement ou en leur facilitant l'accès à des biens, à des services, à des installations ou à des moyens d'hébergement.

[146] The SRFN submits that the TSA, which was signed with Canada to compensate it for the treaty benefits that were denied for decades, is also a program within the meaning of section 16(1) of the CHRA, with the aim of reducing or eliminating disadvantages suffered over that period. The intent of this "ameliorative program," as the SRFN calls it, was to provide economic benefits to the community and improve opportunities for SRFN members.

[147] However, it is not the special program (the TSA) that is *prima facie* discriminatory and to which the exemption under section 16(1) of the CHRA could apply. Rather, it is the decision by Council not to pay PCDs to the Complainants that is discriminatory. Therefore, the defence in section 16(1) does not apply and is not available to the SRFN.

[148] Besides, the SRFN's denial of PCD payments to certain members, like the Complainants, is not consistent with the TSA, the alleged special program. The SRFN contends that the improved opportunities provided by the TSA were only intended for the Original Beneficiaries and not for other SRFN members. As I have explained elsewhere in this decision, the TSA was not only for the benefit of the Original Beneficiaries and their post-2002 descendants. Consequently, even if the TSA were to be considered a special program within the meaning of section 16(1) of the CHRA, the program was intended to assist all members, without any distinction, not just Original Beneficiaries. The SRFN cannot claim the special program as a defence when the discriminatory practices that it claims are "justified" are not even consistent with the special program.

[149] Therefore, the SRFN has not made out any defence under section 16(1) of the CHRA.

E. Issue 5: Was the SRFN's Notice to Members retaliation for the filing of the human rights complaints?

[150] No. I find that it was not reasonable for the Complainants to have perceived that the Notice to Members was in retaliation to their human rights complaints.

(i) What did the Notice to Members say?

[151] The Notice to Members is one page long and comprises nine paragraphs. The signature line at the end says: "Chief and Council." The first paragraph consists of one sentence stating: "This is to address questions that Chief and Council have received regarding the ongoing claims about PCD payments."

[152] The remaining paragraphs can be grouped into two categories. The first four paragraphs are basically a recounting of facts (the "Factual Section"). The last four paragraphs are more positional, reflecting the SRFN's pleadings in this case (the "Positional Section").

[153] The Factual Section states that three claims have been brought "against [the] SRFN," referring specifically to Ms. Way's and Mr. Coyne's human rights complaints and Mr. Shanks' Federal Court proceedings. The dates when the hearing before the Tribunal took place are noted as well as the remaining future dates. The witnesses who had already testified at the hearing are identified by name, including Ms. Way's two sisters. The name of an upcoming witness is also given (Mr. Fraser). One of the paragraphs deals only with Mr. Shanks' case, explaining that *Shanks FC* had found Council's decision to be unreasonable but that the judgment had been appealed to the Federal Court of Appeal, with a likely hearing date by April 2024.

[154] Ms. Way points out that the witnesses she called are described as having testified "on behalf of Ms. Way and against [the] SRFN," while the witnesses called by the SRFN are said to have testified "for [the] SRFN."

[155] The Positional Section basically reiterates the SRFN's submissions as set out in its Statement of Particulars, its opening statement at the hearing, and what it ultimately argued

in its final submissions. This includes the claim that the compensation that Canada agreed to pay in 2002 was based only on the 757 persons on the membership list at the time. There is reference to the Special Meeting and the claim that a motion was passed to limit PCDs to Original Beneficiaries and their descendants born after June 22, 2002, which was later reflected in the *Policy*. The text concludes with the claim that if PCDs are paid to all members, the annual PCD amounts may be impacted, and may eventually result in no PCDs being paid. A comment is made in the last paragraph of the Positional Section that Chief and Council "understand that PCDs are important to our members and your families."

[156] Council approved the text of the Notice to Members at a meeting held in Edmonton on November 24, 2023. Copies of the Notice to Members were then made available to anyone who attended an SRFN members' luncheon that was held in Edmonton the next day, on November 25, 2023. In late January 2024, the Notice to Members was sent to all members by mail.

(ii) What must the Complainants demonstrate to prove that the Notice to Members was in retaliation for their human rights complaints?

[157] As outlined in paragraphs 27 and 28 of this decision, section 14.1 of the CHRA provides that it is a discriminatory practice for a person against whom a complaint has been filed under Part III of the CHRA, or any person acting on their behalf, to retaliate or threaten retaliation against the individual who filed the complaint or the alleged victim.

[158] For the Complainants' allegation to be substantiated, they must prove on a balance of probabilities that:

1) they previously filed a human rights complaint under the CHRA;

2) they experienced an adverse impact following the filing of their complaint from the person they filed the complaint against or anyone acting on their behalf; and

3) there is a link between the filing of the complaints and the SRFN's alleged retaliatory actions that gave rise to the adverse impact.

[159] The Complainants established the two first components. However, I find that the Complainants did not prove a retaliatory link between the SRFN's actions and their complaints, nor that their perception of a link was reasonable.

(a) Did the Complainants previously file a human rights complaint?

[160] Yes. The alleged retaliation (the distribution of the Notice to Members) occurred from December 2023 to February 2024, at the same time as the hearing was still ongoing into their human rights complaints, which they had filed years earlier.

(b) Did the Complainants experience an adverse impact?

[161] Yes. Adverse impacts or treatment have been described as "something harmful, hurtful or hostile" (*Tahmourpour v. Canada (Attorney General)*, 2010 FCA 192 at para 12). The Tribunal has held that a fairly broad and permissive definition of "adverse" would be consistent with the scheme of the CHRA (*Kelsh v. Canadian Pacific Railway*, 2019 CHRT 51 at para 112).

[162] Both Complainants testified that they felt hurt by the message in the Notice to Members and that it impacted on their relationship with the SRFN community at large.

[163] Ms. Way described the Notice to Members as a scare tactic meant to push SRFN members to approach and criticize her for pursuing her human rights claims. She considers the tone in the Notice to Members to be very divisive, especially in the use of the terms "us" versus "them." She interprets the message being conveyed as being that if the complaints are successful and the members' annual PCD payments end up being reduced or eliminated, she and Mr. Coyne should be blamed.

[164] After the Notice to Members was issued, Ms. Way claims that SRFN members in Fort Smith were no longer willing to assist her with the case and became more guarded in their interactions with her. They did not want to be associated with her case out of fear that they would be alienated or retaliated against by the SRFN. Ms. Way declined to disclose the names of the persons who expressed these views but noted that none of the people who

had assisted her in the past were, for instance, willing to serve a witness summons for her in Fort Smith. She ended up using a process server.

[165] Ms. Way claims that she had to “lock down” her Facebook page so that only “friends” could post on it for fear of the comments that would be made on it. However, in cross-examination, Ms. Way acknowledged that she had locked down her Facebook page several months before the Notice to Members was prepared or circulated, although after it was distributed, she raised the privacy level so that friends of friends could not contact her. She also confirmed that aside from other members telling her that they had received the Notice to Members, no one said anything “negative” to her.

[166] Ms. Way testified that the Notice to Members also caused worry and concern amongst her family because two of her sisters were named in the text as having testified on behalf of their sibling. Ms. Way’s family questioned her about whether she should continue to pursue the complaint in light of the Notice to Members. Ms. Way responded that she would continue in the hopes that “nothing would happen.”

[167] Mr. Coyne also testified about the Notice to Members’ adverse impact on him. He felt excluded and ashamed, and spoke of its emotional impact, which left him worried, upset, stressed, and anxious. It added strain to his relationship with his spouse. He was fearful that angry members would seek out where he lives. He was reluctant to travel up to Fort Smith due to similar fears because of what he perceived to be the divisive nature of the Notice to Members, which he felt was meant to shame and intimidate those who challenge the SRFN’s position around PCDs.

[168] Mr. Coyne also testified about the impact that the Notice to Members had on the way he thought of himself and how other members would perceive him. He had feelings of fear and inadequacy because he was not good enough to be a member.

[169] The Notice to Members left him feeling like it damaged any progress he made in getting closer to his family in Fort Smith. He claims some family members no longer communicated with him after the Notice to Members was issued.

[170] Mr. Coyne testified that he had called health care professionals to talk about what he was experiencing but later acknowledged that he had not managed to consult anyone between the dates when he learned of the Notice to Members and when he testified about the retaliation allegations.

[171] Overall, while some of the Complainants' feelings, which they attributed to the Notice to Members, may appear to predate its distribution, I am prepared to accept on a balance of probabilities that after seeing the Notice to Members, the Complainants experienced the adverse emotions and reactions from others that they allege.

(c) Is there a link between the filing of the complaints and the SRFN's alleged retaliatory actions giving rise to the adverse impact so as to constitute retaliation within the meaning of section 14.1 of the CHRA?

[172] No.

[173] The adverse impact consists of harm in the Complainants' relationships with other members, hurt feelings, and anxiety that they experienced after the Notice to Members was distributed. But to substantiate their retaliation allegation, the Complainants must establish a retaliatory link between their human rights complaints and the alleged retaliatory acts that gave rise to this adverse impact.

[174] Proof of the SRFN's intent to retaliate would obviously establish this link. In the absence of such evidence, the Complainants can establish a retaliatory link if they prove that their perception that the actions were in retaliation is reasonable.

[175] There is no direct evidence that the SRFN intended to retaliate against the Complainants for having filed their complaints, and for the reasons below, I do not find that the Complainants' perceptions were reasonable.

[176] I note that the Factual Section is just as the term denotes, factual. The Tribunal and Federal Court hearing processes are open and public. Anyone could attend the hearings or view the pleadings. The paragraphs are written in an objective tone. The Complainants take issue with the use of the terms "against" and "for" the SRFN, suggesting that this defines them as working against the interests of the SRFN community and its members. However,

the reality is that the process before the Tribunal is adversarial. Complainants file complaints **against** respondents, which is the appropriate term. Parties call witnesses at hearings and the term that is usually used to refer to their testimony is “for” that party or “against” the other.

[177] Turning to the Positional Section, it does indeed reflect the stance that the SRFN, as an organization, has adopted in its defence to the complaints. There is nothing mentioned in the Positional Section that the SRFN, as a party, did not previously mention throughout the proceedings before the Tribunal. In expressing its position regarding a case, a party is not obliged to set out the views of the other side. It is normal to expect the party to express its view from its perspective.

[178] The Complainants take issue with the timing of the Notice to Members, coming as it did before the final witnesses had testified and final submissions were made. However, Donald Beaulieu, who was a councillor at the time, and Mr. B. Laviolette, the acting Chief when the Notice to Members was sent, testified that they had been receiving questions from members about what was happening with the ongoing PCD issue and the funds that were being spent litigating it. So, Council instructed its co-CEOs to draft the Notice to Members. Mr. B. Laviolette pointed out that a similar notice with essentially the same information as in the Positional Section was provided to members in a post to the SRFN’s Facebook page on November 17, 2022. That message said it was being issued to address the “many questions around PCD payments” that the Chief and Council were receiving at the time.

[179] Besides, it is hard to see what impact the issuance of the Notice to Members would have had on the Complainants’ case, which was almost complete by that time. The issues that Ms. Way has raised about serving summons on witnesses relates to the additional persons she wished to have testify after I allowed her to amend her complaint to add the present retaliation allegations. The Complainants and the Commission had basically closed their cases by the time the Notice to Members was issued. There was one remaining SRFN witness scheduled to testify.

[180] The Complainants point out that the Positional Section contains inaccuracies such as the claim that the resolution adopted at the Special Meeting and the *Policy* explicitly stated that heirs not born after June 22, 2002, should not receive PCDs. I have determined

in these reasons that this was not the case and have rejected these SRFN allegations. However, the SRFN's submissions right until the end of the hearing have consistently included these allegations. There is nothing new in these allegations being repeated in the Notice to Members at the stage when it was circulated before the hearing had concluded and before I had made my findings on their merits.

[181] The Commission referred me to the decision in *Bressette v. Kettle and Stony Point First Nation Band Council*, 2004 CHRT 40, where I held that the Band Council of the respondent in that case had retaliated against the complainant by setting out its position on an issue within the community. That case can be distinguished from the present one. The issue that the Band Council took a position on was not related to the human rights complaint, but the Band Council chose to allude to the complaint in its response unnecessarily. In contrast, in the present case, the whole issue and reason for the Notice to Members is to inform them of the status of the legal proceedings and set out the position of one of the parties, the SRFN. It was not an unnecessary or gratuitous reference to the human rights complaints, as was the case in *Bressette*.

[182] The Commission also pointed to the holding in *Ledoux v. Gambler First Nation*, 2018 CHRT 26, where a threat of collective punishment for the whole community, which was blamed on the human rights complainant, was found to be retaliatory. However, in that case, the service that the respondent threatened to cut was unrelated to the issues of the case. Basically, the First Nation in that case was saying that paying the remedy to address the discriminatory practice regarding residential accommodation would have an impact in another area, its ability to provide bottled water to its members. In the present case, the narrative throughout the Notice to Members is focussed on what is actually at issue in this case: who is entitled to receive PCDs and what would happen if the number of recipients increased. It is a restatement of the SRFN's consistent and publicly held position on this very issue going back to at least 2016.

[183] For these reasons, I find that the Complainants' allegations of retaliation have not been substantiated.

F. Other issues not before the Tribunal

[184] In its final submissions, the SRFN objected to what it described as efforts by the Complainants to add and raise new allegations through their final arguments, such as references to education and housing services.

[185] Most of these remarks from the Complainants appear to only have been made as background to their submissions. In any event, my reasons only address the issues that are properly before the Tribunal through the complaints that the Commission referred for inquiry and the Statements of Particulars filed by the parties.

[186] In its final submissions, the SRFN also objected to the Commission's role in this case. It alleged that the Commission "overstepped" its role of representing the public interest by adopting the Complainants' positions as its own.

[187] Section 51 of the CHRA states that in appearing at a hearing, presenting evidence, and making representations, the Commission shall adopt any position that, **in its opinion**, is in the public interest having regard to the nature of the complaint. The Commission must, of course, comply with any directions and orders issued by the Tribunal as master of its proceedings, but the Tribunal has no authority to review or control the positions that the Commission may adopt.

VII. REMEDIES

[188] Mr. Coyne's and Ms. Way's complaints have been substantiated. Pursuant to sections 53(2) to 53(4) of the CHRA, I can make a remedial order against the SRFN. I have granted some of the remedies that the Complainants and the Commission have requested while denying others, as I explain below.

A. Payment of PCDs

[189] I have determined that the SRFN engaged in a discriminatory practice when it decided to deny PCD payments to Mr. Coyne and Ms. Way starting in 2017. Section 53(2)(b)

of the CHRA states that the Tribunal may order a respondent to make available to the victim of the discriminatory practice, on the first reasonable occasion, the rights, opportunities, or privileges that are being or were denied to the victim as a result of the discriminatory practice.

[190] Consequently, an order compelling the SRFN to pay the PCDs to the Complainants that were denied to them is warranted. The evidence is that the PCDs for the following years were as follows:

2017	$900
2018	$1,000
2019	$750
2020	$800
2021	$800
2022	$1,000
TOTAL	**$5,250**

[191] I do not have in evidence the amount of each PCD paid to members for the years after 2022. However, the SRFN is ordered to provide those PCDs as well.

[192] Finally, if the SRFN continues to issue PCDs to its members, it must not apply the distinctions to Mr. Coyne and Ms. Way that have been found to be discriminatory.

[193] The SRFN argues that the Tribunal does not have the authority to amend its laws, which it states include the *Election Code* and the *Policy*. However, this order does not amend the SRFN's laws. The Tribunal's order relates to the discretionary decisions taken by Council to deny benefits to the Complainants on prohibited discriminatory grounds.

B. Public interest remedies

[194] The Commission requested in its final submissions, as a public interest remedy, that the SRFN be ordered to cease employing discriminatory policies in relation to age and family

status regarding the processing of all present and future PCD payments, and the allocation of other benefits.

[195] The source of the discriminatory practice in this case was Council's repeated annual decisions to deny PCDs to the Complainants based on the prohibited grounds of family status and age, which I addressed in the preceding remedial order. Other benefits were not at issue in this case.

[196] The Commission also requested that the SRFN be ordered to develop a human rights policy, in consultation with the Commission, that would guard against discriminatory decisions by Chief and Council and the distribution benefits from the Trust Agreement. However, the scope of this case was limited to PCD payments. It was not a broad review of all SRFN decisions and policies. The findings of the Federal Court and the Federal Court of Appeal in *Shanks FC* and *Shanks FCA* combined with the Tribunal's reasons in this case should provide all parties sufficient guidance in this regard and address future potential discriminatory practices.

[197] The Commission's requests are denied.

C. Pain and suffering (section 53(2)(e) of the CHRA)

[198] The Tribunal can order up to $20,000 for any pain and suffering that the Complainants experienced because of the SRFN's discriminatory practice (section 53(2)(e) of the CHRA). The maximum amount of $20,000 tends to be reserved for the very worst cases or the most egregious of circumstances (*Christoforou v. John Grant Haulage Ltd.*, 2021 CHRT 15 at para 98 [*Christoforou*]).

[199] Mr. Coyne testified that the SRFN's decision affected him emotionally, physically, spiritually, and mentally. He spoke about the trauma and sense of abandonment he still feels from being denied a status equal to other SRFN members, as if he is not really part of the First Nation. The denial of PCD payments reignited the trauma and sense of rejection and abandonment he had felt throughout his lifetime. He described his feelings as being analogous to those of the last child to be picked to join the team on the playing field. He felt deliberately targeted as someone living away from Fort Smith, which meant the SRFN knew

little about him. He spoke about the stress, anxiety, and general impact to his mental health of having to fight the SRFN to defend his rights. The SRFN treated him as if he was not a full member. He finds it heartbreaking that the SRFN chose to do this against him, perhaps in the hope that he would give up and the problem he posed to it would go away.

[200] Ms. Way also testified about her hurt feelings in seeing herself excluded from other members, particularly in the knowledge that this was deliberately because of her family status, which prevented her from being a full member until Bill C-3 was passed. She feels a sentiment of not really being an SRFN member, that she is not really entitled to identify herself as a member, and that she is a “less-than-whole” member.

[201] The SRFN noted that Ms. Way acknowledged that she had never previously made any attempt to connect with the SRFN community and had never been to Fort Smith nor attended any of the SRFN’s gatherings. However, Ms. Way testified that she had hoped to become more connected with her heritage once she was registered as a member, only to soon discover a sense of unwelcomeness and lack of belonging through this differential treatment.

[202] The SRFN points out that neither Complainant introduced any medical evidence to corroborate their pain and suffering claims. However, victims of discrimination are not required to provide medical evidence to prove their pain and suffering, and I see no basis to consider the absence of such evidence as preventing me from assessing these damages. Their pain and suffering were detailed in their accounts and the impact of their differential treatment is evident.

[203] The SRFN also cautions that much of the trauma discussed by Mr. Coyne in his evidence is rooted in his adoption and his upbringing away from his family and community. I am mindful of this consideration and have taken it into account in my assessment. Mr. Coyne was asked about this issue directly and he explained that he was retraumatized by the discriminatory practice in this case.

[204] The Complainants each requested the maximum sum of $20,000 in compensation. However, I find that their circumstances do not amount to the very worst or most egregious of cases. Although the differential treatment by the SRFN generated feelings of hurt and an

overall sense of exclusion, a maximum amount of compensation would not be justified in this case.

[205] I find accordingly that an award in the mid-range of the scale is warranted, in the amount of $10,000.

D. Special compensation (section 53(3) of the CHRA)

[206] The Tribunal can order up to a maximum of $20,000 in special compensation if it finds that a respondent has engaged in the discriminatory practice wilfully or recklessly (section 53(3) of the CHRA). This is “a punitive provision intended to provide a deterrent and discourage those who deliberately discriminate” (*Canada (Attorney General) v. Gallinger*, 2022 FCA 177 at para 66, citing *Canada (Attorney General) v. Johnstone*, 2013 FC 113).

[207] 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 (*Christoforou* at paras 106–111). 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.

[208] The Complainants each ask that the Tribunal award the maximum allowable amount of $20,000.

[209] The evidence does not show that the SRFN intended to discriminate against Mr. Coyne and Ms. Way because of their family status. But the SRFN did intend to deny them benefits because they became registered members after 2002, knowing that the reason that they were not members from birth was due to their family status, whether linked to historic gender-based discrimination against Ms. Way’s ancestors or to the tragic removal of Mr. Coyne from home in the Sixties Scoop. Mr. K. Laviolette admitted that the SRFN’s decision, which it claims was based on the motion that he presented at the Special Meeting, was intended to deny PCDs to persons who became members after Bill C-3.

[210] Mr. K. Laviolette would also have been familiar with the plight of persons like Mr. Coyne. He testified that he had family members who were also victims of the Sixties Scoop. Yet, he maintained in his evidence that when the TSA was signed, Mr. Coyne was “not my people.” He is someone who Canada just added to the membership list.

[211] Moreover, the SRFN’s decision to add the June 22, 2002, criterion, which effectively discriminated against the Complainants based on their age, was taken without any indication that this condition was ever addressed at the Special Meeting. The proposed motion that was included in the notice for the meeting, which was only circulated in Fort Smith, did not make any mention of this condition, calling into question Council’s good faith in allegedly implementing the membership’s consensus opinion.

[212] In sum, despite knowing that the Complainants’ family statuses were factors in their not being members in 2002, the SRFN showed complete indifference to the obvious adverse impact of its decision to make distinctions between them and other members, which was further compounded by the decision to add age as a condition to receiving PCDs. To make matters worse, the SRFN repeatedly told the Complainants that it was negotiating with Canada to get more compensation to enable them to also receive PCDs, when in fact, there is little evidence of such efforts. Canada had made it quite obvious that the TLE settlement was final.

[213] Therefore, I find that the SRFN’s discriminatory practice was reckless.

[214] Given the severity of the SRFN’s conduct, I find that a sum of $12,500 in special compensation to each Complainant is justified.

E. Interest

[215] The Complainants have asked for interest on the sums awarded.

[216] The Tribunal can make an award of interest on an order to pay compensation (section 53(4) of the CHRA). Rule 46 of the *Tribunal Rules* provides that interest awarded under section 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.

[217] I order an award of interest on all the compensation ordered in this case. Regarding the compensation under sections 53(2)(e) and 53(3) of the CHRA, the interest will accrue from the date of the BCR that first excluded the Complainants from receiving PCDs: October 23, 2017.

[218] Regarding the payment of the PCDs, the interest will start to run and be calculated as each BCR issuing PCDs was passed starting with the first one on October 23, 2017, onwards to this day.

F. Other remedial claims

[219] The written final submissions of Mr. Coyne and Ms. Way, both of whom are self-represented, included certain additional remedial claims. These include requests for orders that the SRFN create a storage policy for its records, that Ms. Way be declared eligible to apply for housing, and that the SRFN be required to hold meetings in a manner that would enable people outside Fort Smith to participate. The Complainants asked for general declarations about their status as SRFN members.

[220] These are all items that either are not related to the matter at issue in this case (discriminatory practice regarding a service within the meaning of section 5 of the CHRA, that is, the issuance of PCDs), or that the Tribunal has no authority to order.

[221] Mr. Coyne also asked for an order that the SRFN circulate an apology letter. Aside from the fact that the Tribunal does not have the authority to order the issuance of apology letters (*Canada (Attorney General) v. Stevenson*, 2003 FCT 341 (CanLII), at paras 27–35), this decision's reasons are public and should constitute sufficient notice to all of the merits of Mr. Coyne's complaint.

[222] Ms. Way asked that certain BCRs be quashed. That authority rests with the Federal Court (see *Shanks FCA* at para 21).

[223] For these reasons, the Complainants' other remedial claims are denied.

VIII. ORDER

[224] Within 30 days of this decision, the SRFN is ordered to pay the following to each of the Complainants:

a. $5,250 in payment of the previously issued PCDs to which Mr. Coyne and Ms. Way were entitled;

b. A sum equivalent to any PCD payments made to SRFN members after 2022;

c. $10,000 for pain and suffering experienced as a result of the discriminatory practices (section 53(2)(e)); and

d. $12,500 in special compensation (section 53(3)).

[225] Simple interest will accrue at a rate equivalent to the bank rate established by the Bank of Canada calculated on a yearly basis beginning October 23, 2017, for the compensation for pain and suffering and for the special compensation. For the PCD payments, the interest at the same rate will start to run and be calculated on a yearly basis as each BCR issuing PCDs was passed starting from October 23, 2017, and onwards.

Signed by

Athanasios Hadjis
Tribunal Member

Ottawa, Ontario
December 8, 2025

Canadian Human Rights Tribunal

Parties of Record

File Nos.: T2673/4921 and T2674/5021

Style of Cause: Christopher Coyne v. Salt River First Nation – T2673/4921 and Penny Way v. Salt River First Nation – T2674/5021

Ruling of the Tribunal Dated: December 8, 2025

Date and Place of Hearing:

October 30 – November 30, 2023; November 6 – 10, 2023	Edmonton Alberta
January 9-10, 2024; May 22, 23, and 29, 2024	Videoconference
July 1, 2, and 22, 2024; August 23, 2024;	
September 15-16, 2024; October 24, 2024;	
April 7 and 19, 2025	Written submissions

Appearances:

Christopher Coyne and Penny Way, Self-represented

Sophia Karantonis and Jonathan Bujeau; and subsequently, Brittany Tovee, for the Canadian Human Rights Commission

Colleen Verville and Jessica Buhler; and subsequently, Glenn Epp and Inez Agovic, for the Respondent