

IN THE MATTER OF THE HUMAN RIGHTS ACT 1981

BEFORE THE BERMUDA HUMAN RIGHTS TRIBUNAL (CASE NOS. CF19-121 AND CF 18-69)

BETWEEN:

MR JAMES CONYERS

Complainant

-v-

MINISTER OF EDUCATION, GOVERNMENT OF BERMUDA

Respondent

JUDGMENT

Mr Craig Rothwell, Cox Hallett Wilkinson Limited, for the Complainant

Mr Michael Taylor, Attorney General Chambers, for the Respondent

Background

1. The Complainant is a male Bermudian educator with over twenty-five years' experience working in the Bermuda Public School System (BPSS). The Complainant was employed by the Respondent at various schools during his career in both full-time and "allocated" substitute teacher positions.
2. Between 2010 and June 2017, the Complainant applied on a regular basis for a full-time teaching position with the Respondent. Each of his applications for a full-time position during this period were unsuccessful and he instead remained employed by the Respondent as an "allocated" substitute teacher up to and including June 2017. Between 2012 and 2017 he was an "allocated" substitute teacher at the same school, Paget Primary. The Complainant asserts that the reason the Respondent treated him less favourably by not offering him a full-time teacher role was because he is a male Bermudian.
3. Following correspondence from his then attorneys, J2 Chambers, to the Respondent on or about August 2017, the Complainant was offered a full-time teacher position on a one-year fixed term contract at West End Primary between September 2017 and June 2018. The Complainant was

Informed in May 2018 that he had been appointed on a permanent basis to work at the Gilbert Institute, and that he needed to obtain a teacher's license that lined up with his permanent employment offer. This teaching position was "permanent" but since the Complainant would attain the normal retirement age of 65 on 22nd August 2019, his appointment in a permanent teaching position could not be extended to the 2019-2020 academic year, per the Respondent's policies.

4. The Complainant informed the Respondent by letter dated 15 February 2019 that he wished to continue working beyond his normal retirement age and provided his physician's statement confirming his fitness for work. His application was acknowledged by the Respondent by letter dated 18 March 2019 from Ms Karyn Hodgson (Respondent's Human Resource Manager) when he was informed that a further physician's statement would need to be provided in July/August 2019 when requests for employment beyond the age of 65 are considered. The Complainant was also informed that he was required to undertake CPR/AED and SCARS training to be eligible for continued employment. The Complainant obtained a new physician's statement confirming his fitness for work and undertook the required training and provided the Respondent with the necessary certification. These documents were provided to the Respondent on or about 19 September 2019.
5. The Complainant contacted the Respondent on 24 September 2019 to enquire about the status of his application to be included in the published list of substitute teachers available for allocation for 2019 academic year. He has asserted that he was informed by Ms Karen Dill (the Respondent's Human Resources Coordinator for Substitutes) that he could not work whilst there was an ongoing Human Rights Commission (HRC) investigation.
6. Following his alleged discussion with Ms Karen Dill, the Complainant spoke to his attorneys, Cox Hallett & Wilkinson, about this and they wrote to the Respondent's attorneys, the Attorney General's Chambers, the following day on 25 September 2019. They raised their concerns that if the Complainant was not included in the published list of substitute teachers for 2019 academic

year on the grounds of his existing HRC investigation, they considered this would amount to unlawful discrimination under the Human Rights Act 1981 (HRA).

7. The Respondent did not include the Complainant on the published list of substitutes on 7 October 2019. The Complainant asserts that this was retaliation for having brought a complaint against the Respondent.

Teaching roles in Bermuda Public School System

8. The Complainant was engaged by the Respondent either as an "allocated" substitute teacher or as a full-time teacher during his twenty-five-year career as an educator.
9. There are notable differences between the applicable terms and conditions of employment for "allocated" substitute teacher, "long term" substitute teacher, "on call" substitute teacher and full-time teacher positions. The material differences are set out in the collective bargaining agreement between the Bermuda Government and the Bermuda Union of Teachers (B.U.T) and, as referenced therein, the policy and procedures manual for teaching staff, as updated from time to time.
10. An "allocated" substitute teacher is assigned on a full-time basis to a specific school for the academic year, whereas an "on call" substitute teacher is requested by the Respondent at short notice to cover unplanned or unexpected teacher absences across the BPSS. An "on call" substitute teacher is only paid for hours worked. An "allocated" substitute teacher, unlike a full-time teacher, is assigned on a term-by-term basis and does not participate in the Respondent's pension scheme nor does he/she receive pay during the summer months.
11. There are also material differences in the duties and responsibilities required from an "allocated" substitute teacher and a full-time teacher. For example, amongst other differences, an "allocated" substitute teacher does not have regular responsibility for: designing and implementing a lesson plan for a specific class over the course of the academic year; creating, administering and marking formative and summative assessments; providing grades in electronic gradebook; preparing report cards; holding parent conferences; and creating and implementing intervention plans for students who are not meeting academic standards.

Bermuda Public School System (BPSS)

12. The BPSS consists of both "Government Maintained" schools which are fully funded by the Respondent and "Aided" schools which are partially funded by the Respondent. Aided schools are managed by their own Independent Board of Governors and, amongst other matters, make their own decisions (together with the respective school's Principal) regarding the recruitment of teachers. The recruitment of teachers at "Government Maintained" schools is entirely undertaken by the Respondent.
13. The typical teacher recruitment process for a "Government Maintained" school involves the following steps:
- a. advertisement placed by the Respondent;
 - b. applicants short listed for interview by the Respondent;
 - c. candidates interviewed by a panel selected by the Respondent; and
 - d. successful candidates are offered a contract of employment by the Respondent (identifying specific school to which he or she has been assigned).
14. With regards to "Aided" Schools, the process is similar save that the decisions with regards to short listing, interviewing and, ultimately, decisions on recruitment are delegated to the respective schools' Board of Governors and Principals.

The First Complaint

15. The Complainant's first complaint against the Respondent is set out in the Particulars of Complaint dated 17 July 2018 (submitted on 4 May 2018) (First Complaint), and in summary, the allegations are that:
- a. The Respondent's decision to refuse to employ the Complainant in a full-time teaching position during the period 2010 to 2018 (inclusive) was a breach of section 6(1)(b) of the Act as read with section 2(2)(a) (i and/or ii) (i.e. amounted to less favourable treatment of

the Complainant by the Respondent because of his place of origin and his sex (Direct Discrimination)).

16. The Complainant's position can be summarised as follows:

- a. The Respondent's decision to not employ the Complainant in a full-time teaching role was Direct Discrimination because:
 - i. There was no credible justification for the failure to appoint him to a full-time position; and
 - ii. There was evidence of discrimination against him as a Bermudian male.
- b. The evidence relied upon by the Complainant to support his assertion that there was no credible justification for not appointing him to a full-time position, includes:
 - i. He was a long term "allocated" substitute carrying out the same role as a full-time teacher for five years at Paget Primary. The duties of a long term "allocated" substitute did not differ from that of a full-time teacher (including responsibility for preparing lesson plan, carrying out assessments, giving grades and holding parent conferences etc);
 - ii. He had received no adverse appraisals of his performance on record, only positive ones;
 - iii. He has provided positive references from various Principals and Deputy Principals from the schools at which he worked attesting to his abilities and attitude;
 - iv. There must have been other reasons unrelated to his performance, abilities or qualifications that led to the less favourable treatment; and
 - v. The real reason for the less favourable treatment was a bias against appointing Bermudian male teachers by the Respondent.
- c. The evidence relied upon by the Complainant to support his assertion that there was prima facie discrimination and bias against him as a Bermudian male, includes:
 - i. The Respondent's interview notes dated 29 June 2017 which the Complainant alleges were written by Ms Karyn Hodgson (the Respondent's Human Resources

Manager between 2010 and 2019) included reference to him having "conveyed a sense of entitlement" with the words "Black, bdlan" written alongside;

- ii. His replacement by a female candidate (Linda Holdipp) with similar qualifications and experience in the role of full-time Math teacher at TN Tatem in September 2010 (who allegedly knew the Principal of TN Tatem);
- iii. Various alleged selections of non-Bermudian female candidate(s) and/or female candidates in preference to the Complainant, including, for the following positions:
 1. a full-time teacher position at Sandys Secondary Middle School in September 2012; and
 2. a primary school classroom teacher post in the BPSS in or around January 2016;
- iv. Various alleged failures to process his applications for full time teacher positions, including:
 1. for an M3 position at Sandys Secondary Middle School in July 2014;
 2. for a Middle School Mathematics teacher role in the BPSS in January 2016 (the position was filled by a female non-Bermudian candidate (Ms Tamashwar Budhoo); and
 3. for a Learning Support position in the BPSS in January 2016 (the positions were offered to a female overseas candidate (Ms La Tonya Alleyne-Garnes) and a female candidate (Ms Judith Welch);
- v. The alleged arbitrary nature of the selection process for the post of Primary School Teacher in June 2017 where Ms Kamala Shastri was selected as a preferred candidate for three schools despite apparently being ranked joint lowest alongside the Complainant; and

- vi. The disparity between the number of female and male teachers at Primary School level over the past fifteen years and based on disclosure provided in relation to specific applications none of the male candidates were selected.

The Response to the First Complaint

17. The Respondent submitted a response to the First Complaint dated 26 September 2018. The

Respondent's position can be summarised as follows:

- a. Any acts or omissions relied upon by the Complainant which occurred more than two years before the First Complaint was filed with the HRC are out of time for the purposes of Section 14H (1)(c) of the HRA (Note this issue is addressed below under the section headed "Preliminary Issues");
- b. The Complainant has provided no evidence to support his assertion that he was not offered a full-time teacher position because of his sex and/or place of origin and is relying on adverse inferences alone;
- c. The Respondent's advertisements for teaching roles do not require a candidate to be of a particular gender or place of origin and it has no control over who applies for a particular role;
- d. The duties and responsibilities of an "allocated" substitute are less than those of a full-time teacher within the BPSS (including less responsibility for preparing lesson plan, carrying out assessments, giving grades and holding parent conferences etc);
- e. The interview process for the position of Learning Support Teacher and Classroom Teacher in June 2017 did not refer to the candidates' gender or place of origin and was valid and lawful with candidates selected based on who was best suited to fill those vacancies based on the needs of the student population; and
- f. In response to the selection process for the post of Primary School Teacher in June 2017 where Ms Kamala Shastri was selected as a preferred candidate, the Respondent maintains that Ms. Shastri and the Complainant did not equally rank with Ms. Shastri received an interview score of eight (8) with the Complainant receiving a two (2).

The Second Complaint

18. The Complainant submitted a second complaint against the Respondent as set out in the Particulars of Complaint dated 20 November 2019 (submitted on 30 October 2019) (Second Complaint), and in summary, the allegations are that:

- a. The Respondent's decision not to include the Complainant on the list of substitute teachers was a breach of Section 8 (a) of the Act which states "no person shall refuse to employ or continue to employ any person in order to prevent any other person from making a complaint or disclosure or from testifying or participating in any other way in a proceeding under this Act, or with a view to penalising any person for having made such a complaint or disclosure or for having testified or participated as aforesaid" (Victimization).

19. The Complainant's position can be summarised as follows:

- a. The Complainant alleges that he was informed verbally by Ms Karen Dill that he was not allowed to work as a substitute teacher because of the then ongoing investigation by HRC into his First Complaint;
- b. The Respondent's decision was confirmed by its failure to include him on the list of available substitutes on 7 October 2019 despite him having met and provided all the necessary training requirements and medical documentation for applicants wishing to work beyond the normal retirement age of 65; and
- c. The Complainant's Counsel wrote to the Respondent's Counsel by letter dated 25 September 2019 (the day following the alleged discussion with Ms Dill) asserting that any decision to prevent him from working as substitute due to the ongoing investigation would be considered a breach of the HRA.

The Response to Second Complaint

20. The Respondent submitted a response to the Second Complaint dated 7 February 2020, the Respondent's position can be summarised as follows:

- a. The Complainant has no right to be employed beyond the normal retirement age of 65 and should have had no expectation that he would be offered further employment as a substitute teacher; and
- b. Whilst there is discretion to permit a teacher to work beyond age of 65 for no more than one year at a time this is not guaranteed and will take into account the conditions of BPSS, usefulness of the teacher and all other material factors.

Preliminary Matter – Time Limits

21. The relevant section of HRA which deals with time limits is 14H(1)(c) which states that a complaint to the HRC "*shall be made within six months after the alleged contravention takes place: Provided that the Executive Officer may entertain a complaint up to two years after an alleged contravention if he is satisfied that there are good reasons for the delay and that no one will be prejudiced by the delay*".
22. The material facts are that the Complainant seeks to rely on acts or omissions which took place more than two years before he submitted his First Complaint to the HRC on 4 May 2018. The specific acts or omissions relied upon relate to applications which the Complainant says he made to the Respondent for full-time teaching positions between 2010 and 2018 which it is alleged were denied to him because of his sex and/or national origin.
23. The Tribunal is aware that this preliminary issue was originally considered by the HRC and that both the Respondent's and Complainant's respective Counsel provided written submissions on this issue prior to the matter being referred to the Tribunal. Notwithstanding the HRC's decision to refer the entirety of the First Complaint (including, paragraphs 25(a) to (h) inclusive) to the Tribunal, further written submissions (together with relevant authorities) were received by the Tribunal from both the Complainant's and Respondent's respective Counsel in relation to the time limit issue.
24. The Complainant's position with regards to time limits can be summarised as follows:

- a. No part of the Complainant's First Complaint is time barred as the principle of continuing discrimination or continuing acts is applicable to bring all the allegations dating from 2010 to 2018 within time;
- b. There is no specific reference to the principle of a continuing act in the HRA but the case of *Bank of Bermuda v Minister of Community Affairs and Sport Crim App No.13 of 2004*¹ is relied upon as confirming this principle ought to be taken into account. This case considered whether a complaint was time barred and referred the matter back to the Board of Inquiry stating "*The application of any time bar provision, particularly if it is necessary to consider questions of prejudice as possible prejudice caused by any delay, is notoriously fact-specific, and it certainly is so here. We need not elaborate on this; and among other considerations, it may become necessary to decide how to apply the statutory time-limit in cases where a continuing breach is alleged*";
- c. It is only after there has been more than one detrimental action that it is possible to identify a policy, rule, practice, scheme, regime or a continuing act of discriminatory state of affairs^{2 3};
- d. The continual denial of Complainant's applications for a full-time position without adequate explanation, despite having the necessary qualifications, amounted to a "continuing" act of discrimination because it represented a recurring practice of the Respondent;
- e. The rejection of each application was part of a continuous act extending over a period of time, rather than being a succession of unconnected or isolated specific acts, for which time would run from the date when the specific act was committed. It is alleged that this

¹ Paras. [] *Bank of Bermuda v Minister of Community Affairs and Sport Crim App No.13 2004*

² *Hendriks v Metropolitan Police Commissioner [2002] EWCA Civ 1686*

³ *Owusu v London Fire and Civil Defence Authority [1995] IRLR 574*

less favourable treatment was because of his sex and place of origin, which was a consistent factor in each rejection;

f. If there is no continuing act, then there are good reasons for the delay and no one will be prejudiced by extending the time limit to two years from the date of submission of the First Complaint, for the following reasons:

- i. The Complainant believed that if he brought a complaint against the Minister of Education this would adversely affect his potential for securing a full-time position in the future;
- ii. The Complainant's original attorneys delayed submitting his First Complaint;
- iii. The fear of retaliation was not without merit as his request to be included on the substitute teachers list was withheld (as set out in his Second Complaint);
- iv. If the Respondent wishes to state that it is prejudiced because it no longer has records available from 2010 onwards due to mold at its facilities that should not be used to its advantage as the records should have been properly maintained and available at all times;
- v. The Respondent was on notice of the potential claim as early as April 2017 and it should have taken opportunity to retrieve the records then and the same for taking statements from any witnesses;
- vi. The letter from the Respondent's Counsel dated 12 February 2018 providing their initial response to the allegations made no reference to any difficulties locating records or contacting witnesses; and
- vii. The failure to produce records is more prejudicial to the Complainant than to the Respondent because this evidence would go towards showing less favourable treatment in not selecting him for a full-time position.

25. The Respondent's position with regards to time limits can be summarised as follows:

- a. It is mandatory for any acts or omissions relied upon by the Complainant to have occurred within six months of the date on which he submitted his First Complaint (i.e. by no later 4 November 2017);
- b. The HRC may consider any acts or omissions which took place up to two years before the date of submission of the First Complaint (i.e. by no later 4 May 2016) if there were good reasons for the delay and it would not prejudice either party;
- c. There is no scope for the HRC or Tribunal to consider any matters that occurred more than two years before the date of submission of the First Complaint (i.e. prior to 4 May 2016);
- d. The HRC made an erroneous administrative decision by considering matters that occurred more than two years before the date of submission of the First Complaint and the Tribunal is referred to the Bermudian case of *Susann O. Smith v The Minister of Culture and Social Rehabilitation and Ombudsman for Bermuda [2011] SC (Bda) 8 Civ (14 February 2011)* ;
- e. The Complainant cannot rely on any delay caused by his own attorneys as a "good reason" for the delay;
- f. The Respondent is prejudiced by the delay due to difficulties locating contemporary documents relating to the matters which are the subject of the First Complaint and due to its potential witnesses having retired, changed employment or moved overseas in the intervening period; and
- g. The Tribunal derives its power from the HRA and seeking to consider matters that occurred outside of the normal statutory time limits would be ultra vires (outside of the Tribunal's legal authority) and compound the error of the HRC.

26. The Tribunal has considered this preliminary issue afresh and Counsels' respective submissions given its significance to both the First Complaint and also to matters involving an alleged continuing discriminatory state of affairs which may come before a future Tribunal.

27. The Tribunal acknowledges that in cases involving alleged discrimination, often a complainant will seek to rely on a series of detrimental actions by their employer which may only be possible to detect if there is a continuing state of discriminatory affairs by reviewing the whole series of

incidents, which may be spread over a significant period of time extending beyond the ordinary statutory time limits.

28. The Tribunal finds that as a matter of law, (taking into account the Bermuda Court of Appeal judgment in *Bank of Bermuda v Minister of Community Affairs and Sport Crim App No.13 of 2004* and the authorities provided by the Complainant's Counsel including the commentary on this issue in Harvey on Industrial Relations and Employment Law⁴) that it is permissible and not ultra vires for it to consider whether there is a continuing discriminatory state of affairs consisting of incidents which occurred more than two years prior to the date a complaint was submitted to the HRC, provided that the last act in the series took place within the statutory time limits (i.e. no later than six months prior to the date of submission or two years where there were good reasons for the delay and no prejudice to the parties) and/or the continuing state of affairs persisted at that time. In a scenario where there was found to be a continuing state of affairs and/or act of discrimination the whole series of acts or omissions would be within the normal statutory time limits. Therefore, the Tribunal finds that it is permitted as a matter of law to consider the totality of the Complainant's First Complaint including matters that occurred more than two years before he submitted his First Complaint to assess whether there is a continuing act of discrimination and/or continuing discriminatory state of affairs.
29. However, if the Tribunal is wrong to consider matters which occurred outside of the normal statutory time limits, we nonetheless find that it is appropriate in this case to extend the normal six-month time limit to two years from the date of submission of the First Complaint. We accept the Complainant's submissions with regards to the good reasons for the delay and find that any prejudice that Respondent suffered as a consequence was self-inflicted due to its failure to properly secure its own records or seek to obtain witness testimony at an earlier date once it became aware of the allegations. We also find that any prejudice suffered by the Respondent due

⁴ Para. 822 of Harvey on Industrial Relations and Employment Law dated [].

to the lack of records and testimony will also prejudice the Complainant, as there is a lack of evidence available in relation to the First Complaint.

The Law

30. Section 2 of the HRA defines discrimination as follows:

Direct Discrimination claim

"(2) For the purposes of this Act a person shall be deemed to discriminate against another person-

(a) If he treats him less favourably than he treats or would treat other persons generally or refuses or deliberately omits to enter into any contract or arrangement with him on the like terms and the like circumstances as in the case of other persons generally or deliberately treats him differently to other persons because –

(i) of his race, place of origin, colour, or ethnic or national origins;

(ii) of his sex....;"

Paragraph 2(2)(a) of the HRA is concerned with direct discrimination.

31. The Complainant asserted that the "protected" characteristics which he relied upon in these proceedings were that he was a male Bermudian.

32. In addition, with respect to the Second Complaint, the Complainant asserted that he was "victimised" for having made the First Complaint by the Respondent by virtue of its decision that he was not allowed to work as a substitute teacher because of his ongoing investigation by HRC into his First Complaint which was confirmed by its failure to include him on the published list of available substitutes on 7 October 2019.

33. The HRA makes it unlawful for employers to discriminate in the circumstances set out in section 6 of the HRA. The Complainant has asserted that he has been discriminated against in reliance on paragraph 6(1) (b).

34. Section 6 of the HRA provides as follows:

"Employers not to discriminate

6 (1) *Subject to sub-section (6), no person shall discriminate against any person in any of the ways set out in section 2(2) by...*

(b) dismissing or refusing to employ or continue to employ any person."

Victimisation claim

35. Section 8 of the HRA provides as follows:

"Discrimination etc. prohibited for taking part in proceedings under Act

8 *No person shall...*

(a) refuse to employ or to continue to employ any person...

In order to prevent any other person from making a complaint or disclosure or from testifying or participating in any other way in a proceedings under this Act, or with a view to penalizing any person for having made such a complaint or disclosure or for having testified or participated as aforesaid.

This type of claim is generally referred to a claim for "Victimization" and the Tribunal have referred to it as such in this Judgement.

36. Taking each head of claim in turn:

- a. With respect to a claim for Direct Discrimination, the Complainant must demonstrate that he was treated less favourably than "*other persons generally*". The case of *Roberts & Hayward* confirmed that a comparator exercise can be applicable in Direct Discrimination claims⁵. A comparator is a person or group of people who share the same circumstances as the Complainant (i.e. had applied for full time teaching roles with the Respondent and had similar qualifications and experience), but without the protected characteristic which they are

⁵ *Roberts & Hayward v Minister of Home Affairs & Public Safety et al* [2008] Bda L.R. 47, para 16.

claiming is the cause of their discrimination. In this matter, no specific submissions were made by either Counsel by way of the pleadings or written or oral submissions at the full merits hearing with respect to an appropriate comparator group. As such the Tribunal is at liberty to determine the appropriate hypothetical comparator group for the purposes of considering whether the Complainant's treatment was less favourable. The Tribunal finds that the appropriate hypothetical comparator group in the present case were "other persons" who applied for full time teaching positions but who did not share the Complainant's protected characteristics (i.e. male and Bermudian).

37. The burden of proof in discrimination claims, as confirmed in *Roberts & Hayward*⁶, is that the Complainant must first establish a prima facie case of discrimination. If the burden of proof is not discharged by the Complainant, then the claim fails. If so established, the burden of showing that there was another non-discriminatory explanation for the less favourable treatment rests with the Respondent.

The Issues

38. Having considered the background to this matter and the applicable legislative framework, the issues in this case are as follows:

Direct Place of Origin and/or Sex Discrimination

- a. Has the Complainant shown facts from which the Tribunal could conclude, in the absence of an adequate explanation, that an unlawful act of discrimination has taken place (i.e. a prima facie case)?

⁶ *Roberts & Hayward v Minister of Home Affairs & Public Safety et al* [2008] Bda L.R. 47, para 12.

- b. If so, Respondent must explain the reason for the alleged discriminatory treatment and satisfy the Tribunal that on the balance of probabilities (i.e. more likely than not) the protected characteristic played no part on that decision?

Victimization

- a. Did the Respondent have knowledge of the fact that an allegation of a human rights infringement had been made by the Complainant?
- b. Did the Respondent know that they were taking retaliatory steps or objectively showing a retaliatory intent?
- c. Did the Respondent take any retaliatory steps against the Complainant?

The Evidence

39. The evidence in this case was taken over the course of one day on Wednesday 17 April 2024. Each witness was required to read in their own witness statement under oath (or by way of affirmation at their choice) and this stood as their examination-in-chief.
40. We do not seek to summarise all the evidence in this judgment. The Complainant relied upon his own testimony and that of his wife, Mrs Mary Conyers. He was cross examined by Mr. Taylor.
41. The Respondent called two witnesses, namely: Ms Kalmar Richards, (Commissioner of Education) and Mrs Sonia Raynor (formerly Ms Sonia Haley) (Deputy Principal at Paget Primary School) who attended the Complainant's interview for the position of Learning Support Teacher and Classroom Teacher on or about 30 June 2017. Each of the Respondent's witnesses was cross examined by Mr Rothwell.
42. The Respondent chose not to adduce a witness statement from Ms Karen Dill (who it is alleged the Complainant spoke with on 24 September 2019 regarding his application to be included on the substitute teacher list for the 2019 Academic year). Mr Taylor explained that Ms Dill was signed off work and therefore unable to provide any witness testimony at the full merits hearing. The Tribunal notes that the hearing had been listed originally for March but was rescheduled to 17

April 2024 at the Respondent's request in order that Ms Dill could attend the hearing. Furthermore, the Respondent has been aware of the Second Complaint since it was filed with the HRC on 30 October 2019 and, as such, has had more than ample time to have obtained a witness statement from Ms Dill regarding this matter yet chose not to do so.

43. It is noted that the Respondent provided additional documentation at the outset of the full merits hearing, including various tables showing information about the gender breakdown of Senior School, Middle School and Primary School staff for the academic years 2010 to 2023. This additional documentation was allowed into evidence with the agreement of the Complainant's Counsel.

44. In addition, following a request from the Tribunal, the Respondent provided further evidence regarding the gender breakdown of Senior School, Middle School and Primary School staff for the academic years 2010 to 2023 as well as information relating to the published list of substitute teachers for the academic years 2019 to present date. The Complainant also provided additional evidence regarding his attempts to mitigate his loss. The Tribunal has considered the totality of the evidence in reaching its determination in this case.

Evidence of Mr James Conyers

45. We find that the evidence of the Complainant was generally clear and credible.

46. The Complainant provided the Tribunal with an extensive history of his career as an educator within the BPSS. He explained that he was employed by the Respondent as an "allocated" substitute teacher for eight years between October 2009 to June 2017 and during this period he consistently applied for a full-time teaching role but on each occasion he was unsuccessful.

47. The Complainant explained that often he would not be invited to attend an interview and would simply find out just prior to the start of the school year that he had not been successful in attaining a full-time position. He explained that he only accepted the "allocated" substitute positions because he needed to continue to earn a living, but he continued to be hopeful that he would be awarded a full-time teacher role.

48. The Complainant explained that the terms and conditions of employment for an "allocated" substitute teacher were far less favourable than those on offer for a full-time teacher. He stated that the typical progression for an "allocated" substitute teacher was to work for a period as a substitute and then be considered for a full-time teacher position at the same school. He noted that he had been assigned as an "allocated" substitute teacher to Paget Primary for five consecutive years and had received good feedback but continued to be unsuccessful in obtaining a full-time teacher position.
49. The Complainant provided a number of examples of recruitment processes where he considered that the Respondent had been less than transparent and raised concerns that some of his applications did not appear to have been considered at all. He acknowledged that due to the limited disclosure from the Respondent with regards to his specific applications it was difficult to determine which candidates were interviewed for particular roles or why specific recruitment decisions were made.
50. The Complainant agreed that the advertisements and interviews were not explicitly discriminatory, but could not understand why he had not been offered a full-time position after working as a substitute for such an extended period, particularly when at the same school (Paget Primary).
51. The Complainant confirmed that throughout the period of his applications, he continued to receive the required Bermuda Educators Council license, which required a certain number of hours of continued education or professional development.
52. The Complainant explained that he formed the view from his regular rejections that the Respondent had a pattern of not using Bermudian (especially male) teachers to fill full-time teacher vacancies and preferred to employ non-Bermudian (mainly female) teachers. The Complainant provided some examples where he considered he had been overlooked in favour of a female and/or non-Bermudian applicant who had similar qualifications and experience to himself including one where a work permit had ultimately been refused by the Department of Immigration.

53. The Complainant explained that he was confused by the Respondent's decisions not to appoint him to a full-time teaching position given his experience and generally positive feedback he had received from his allocated substitute teacher positions. He acknowledged that he had been provided with limited information from the Respondent with respect to a number of his applications, so often did not know who was appointed to the position and was given very limited feedback, if any, for the rejections. He noted that as part of the disclosure exercise in relation to these proceedings the Respondent had disclosed what appeared to be interview notes from his application to a position in most likely June 2017 where the notetaker had referred to him as a "Black, Bdlan" next a comment that he had "conveyed a sense of entitlement". The Complainant indicated that he felt these comments were unjustified, inappropriate and indicated a bias against him as a black Bermudian man.

54. With regards to the interview which took place in June 2017 for the post of Primary School Teacher, the Complainant noted that the interview notes disclosed by the Respondent showed him and a Ms Kamala Shastri being ranked joint bottom. However, Ms Shastri was then recommended for the post by, amongst others, Ms Sonia Haley of Paget Primary and Ms Dill of Port Royal. The Complainant felt this showed that the decision-making process was entirely arbitrary and that posts were not being filled by the most suitable candidates. The Complainant explained that at around the same time as his application in 2017, he had received a very positive character reference from Marsha Rollins, a Deputy Principal. Despite this, his application was again unsuccessful at which point the Complainant stated that he had come to believe that other factors such as his national origin and/or sex were being taken into account. He then instructed J2 Chambers to advise him.

55. The Complainant instructed J2 Chambers to write to the Respondent's attorneys and in his view, this ultimately prompted the Respondent to offer him a full-time position at West End Primary on a one-year fixed term basis for the 2017/2018 academic year. He went on to confirm that the following year he was offered a full-time teaching contract for the 2018/2019 academic year with the Gilbert Institute. However, the Complainant felt that the Respondent's actions were too little

too late and filed his First Complaint with the HRC in May 2018 alleging direct discrimination on the grounds of national origin and sex.

56. The Complainant, having reached the normal retirement age of 65 in August 2018, was not eligible for further full-time teaching positions for 2019 academic year but indicated to the Respondent that he wished to continue working. He confirmed that he had submitted an application for a substitute position and had obtained the necessary medical clearance from his physician as well as having completed the required training so that he would be eligible for a substitute teacher position.

57. He explained that when he called the Respondent for an update on his application in September 2019, he spoke to a Ms Karen Dill (Human Resource Co-ordinator for Substitutes) who informed him that he was not allowed to work as a substitute teacher whilst there was an on-going HRC investigation.

58. The Complainant confirmed that when he saw that his name was not included on published list of available substitutes on 7 October 2019, he considered he had been victimised because of his complaint to the HRC.

Evidence of Mrs Mary Conyers

59. We found Mrs Conyers' evidence to be clear and consistent with her short, written statement which supported the Complainant's version of events regarding the alleged telephone call with Ms Dill on 24 September 2019. Namely, that she was with the Complainant when he called Ms Dill and recalled he asked about the status of his application and that he repeated what Ms Dill had told him out loud. Specifically, that due to his HRC investigation he could not be employed as a substitute. Her version of events was not disputed under cross-examination.

Evidence of Ms Kaimar Richards

60. Although we found Ms Richards' evidence to be clear the Tribunal found that her evidence did not provide any real insight into the material events relating to the Complainant's complaints. We note

that Ms Richards became Commissioner of Education in September 2018 and was not involved in any of the specific recruitment processes which concerned the Complainant. As such, she could not shed any light on why the Complainant had not been offered the full-time teaching roles.

61. Ms Richards provided a high-level explanation of the differences between an "allocated" substitute teacher and a full-time teacher. She also explained the structure of the Bermuda public school system and the differences between Aided and Fully Maintained public schools. Specifically, Ms Richards confirmed that Aided schools conduct their own recruitment process, and the Respondent was not directly involved with any decisions being made by their respective Board of Governors.
62. Ms Richards made reference to a confidential conciliation meeting on 26 June 2019 and referred to her concerns that the Complainant did not fully understand the meaning of pedagogy. She provided her own explanation as to what this phrase really meant. She shared that after reviewing the Complainant's file, she concluded that his performance was not as good as he had indicated and that there was a need for improvement in some key areas. Ms. Richards also noted he had not updated his resume. During the Complainant's evidence, he provided a definition of pedagogy that differed significantly from Ms. Richards'.
63. Ms Richards reiterated that she felt the Respondent's job advertisements did not contain any requirements regarding gender or national origin and stated that the Respondent had no control over who applied for the roles. She explained that the recruitment decisions were made by the respective Principals, and she felt that any decisions were based on merit. She also stated her view that the Respondent was at a disadvantage refuting the Complainant's allegations because a number of the Principals involved in the decision making process had now retired or been reassigned and did not have access to their records and files.
64. Ms Richards confirmed that she was not aware of any conversation that the Complainant may have had with Ms Dill but noted that he had not raised the matter with her. In her view, the filing of an investigation with the HRC would not have been a factor in the Complainant not being selected as a substitute teacher.

65. She further confirmed that upon reaching the age of 65, a substitute teacher who wishes to continue working must produce a medical certificate annually confirming that he/she is fit to work and then seek approval from the Head of the Civil Service. Any assignment is then based on the requirements of the public schools at the time.

66. Ms Richards was also asked to comment on whether she considered the interview notes for June 2017 referring to the Complainant as "*having a sense of entitlement*" with the words "*black bdian*" next to it was acceptable. Ms Richards declined to offer any comments.

Evidence of Ms Sonia Raynor

67. We found Ms Raynor's evidence to be clear and credible. Ms Raynor (former Ms Haley) confirmed that she had been part of an interview panel which interviewed the Complainant for a new teacher position (at Paget Primary) on or about 30 June 2017.

68. She explained that she recalled the interview process and that the standout candidates for the position were Ms Ashleigh Lowe and Ms Kamala Shastri. She was taken to the email exchanges between the various interview panel members which indicated that Ms Lowe and Ms Shastri were amongst the preferred candidates. She confirmed that it was her recollection that they were two of the best candidates.

69. Ms Raynor was asked to explain why the interview panel scoring sheet indicated that in fact Ms Shastri was scored an 8 the same score as the Complainant. Ms Raynor explained that the scoring process from her recollection was that 8 was the highest and 1 was the lowest. The Complainant score was a 2 not an 8. The interview panel scoring sheet had changed the position of the Complainant to reflect the order in which the interviews took place, but his score was still alongside his name (i.e. a 2).

70. Ms Raynor confirmed that the persons chosen for the roles of Learning Support Teacher and Classroom teacher were in her view based on who was considered most suited for the students and the programs at the relevant school (in this case Paget Primary) and the non-selection of the Complainant had nothing to do with his sex or place of origin.

71. Ms Raynor confirmed that the members of interview panel following the conclusion of the interview process would email Ms Karyn Hodgson with their respective preferences and the teachers would then be allocated according to those preferences and school's respective needs.

Legal analysis

(1) Direct Place of Origin and/or Sex Discrimination

- a. *Has the Complainant shown facts from which the Tribunal could conclude, in the absence of an adequate explanation, that an unlawful act of discrimination has taken place (i.e. a prima facie case)?*
- b. *If so, the Respondent must show on the balance of probabilities (i.e. more likely than not) that there was a non-discriminatory reason for the treatment and satisfy that the protected characteristic played no part on that decision.*

72. The Complainant must first show that he was treated less favourably by the Respondent than other persons generally. In this regard, the Tribunal is entitled in the absence of an actual comparator group to determine a hypothetical comparator group to assess whether the Complainant suffered less favourable treatment because of his place of origin and sex.

73. The Tribunal finds that the appropriate hypothetical comparator group in the present case is "other persons" who applied for full time teaching positions with the Respondent and had the same qualifications and experience but who did not share the Complainant's protected characteristics (i.e. male Bermudian).

74. The Tribunal must also consider whether the Complainant has proven facts from which, in the absence of any adequate explanation, could lead us to conclude that there has been an unlawful act of discrimination.

75. We find that the Complainant has established a prima facie case of discrimination taking into account the following:

- a. There is evidence from the interview notes disclosed for the June 2017 application that at least one person involved in the recruitment process considered that the Complainant

"conveyed a sense of entitlement" and the inference is that this was because he is a "Black, Bermudian" according to the handwritten notes; and

- b. The statistical evidence that there is a significant disparity between the number of female to male teachers at Primary School level and the fact no male candidates (albeit smaller in number) appear to have been selected for the roles which the Complainant applied for.

76. Having determined that the Complainant has established a *prima facie* case for unlawful discrimination the Tribunal now turns to consider whether the Respondent has on the balance of probabilities (i.e. more likely than not) shown that there was a non-discriminatory reason for the treatment and that the protected characteristic relied upon (i.e. his national origin and sex) played no part in its decision-making process.

77. In this respect, the Tribunal finds, based on the limited evidence available, that whilst the Respondent's recruitment processes were not perfect and could have been more transparent, the Complainant has not been able to show on the balance of probabilities that he was unsuccessful in his applications for a full-time teacher position because of his sex and national origin (i.e. because he is a Bermudian male). We find that the evidence shows there were credible reasons for not appointing the Complainant to full-time teaching positions which were unrelated to his national origin or sex.

78. Therefore, the Complainant's claim for Direct Discrimination fails. In reaching our decision the Tribunal makes the following findings of fact (based on the documentary evidence received from the Respondent and the witness testimony):

- a. The interview notes of 29 June 2017, whilst containing what we consider to be a discriminatory comment most likely attributable to Mrs Karyn Hodgson, are not in the Tribunal's opinion sufficient to taint this interview process or each and every other recruitment process involving the Respondent during the period 2010 to 2018 or establish that it held an inherent bias against male Bermudian teachers such as the Complainant.
- b. Mrs Karyn Hodgson as HR Manager was not a decision maker in respect to the candidate selection process and the decisions were made by the respective principals or deputy

principals of each school as supported by the evidence of Ms Raynor including with respect to the June 2017 application to which the interview notes referred to above appear to apply. We further note that the Complainant did secure full time teaching roles for the academic years 2017-2018 and 2018-2019 (whilst Ms Hodgson remained the HR Manager).

- c. The Tribunal finds that the typical recruitment process for teaching positions involved interview panel members (not Ms Hodgson) confirming their preferred candidates to Ms Hodgson and teachers were then allocated to the schools based on the specific needs of the school and consideration of the individual preferences of the principals.
- d. We find that there are significant differences between the roles of an "allocated" substitute teacher and a full time teacher (including, but not limited to, lack of regular responsibility for: designing and implementing a lesson plan for a specific class over the course of the academic year; creating, administering and marking formative and summative assessments; providing grades in electronic gradebook; preparing report cards; holding parent conferences; and creating and implementing intervention plans for students who are not meeting academic standards) and as such, a candidate like the Complainant who has significant experience as an "allocated" substitute is not necessarily the best candidate for a full time teacher position.
- e. The references provided by the Complainant in respect to his abilities and attitudes, whilst positive about his character, do not demonstrate that he has requisite technical ability or qualifications to perform a full-time teacher position.
- f. We find that there is no direct evidence that the Respondent favoured female non-Bermudian candidates over the Complainant and we do not consider that the circumstantial evidence is sufficient for the Tribunal to draw adverse inferences. In reaching our finding, we find the testimony of Ms Raynor (nee Haley) persuasive that the decision-making process was merit based, took into consideration each candidates' qualifications and experience, and the needs of the specific school.

- g. We further accept the evidence of Ms Raynor (nee Haley) with regards to the alleged arbitrary nature of the selection process for the June 2017 Primary School Teacher post, namely, that the Complainant's score was a two and not an eight, and Ms Shastri scored eight, the equal highest and the same as Ms Lowe. We accept that the manuscript notes indicated a change in the order of the interviews but not the Complainant's score.
- h. The evidence provided by the Respondent clearly demonstrates that there is a much higher proportion of female to male teachers at all levels (Primary, Middle and Senior) within the BPSS. This has remained relatively stable over a number of years and is broadly consistent with other comparable jurisdictions. This evidence on its own does not indicate that there is an inherent bias by the Respondent against male teachers.
- i. The supplementary information provided by the Respondent regarding the percentages of Bermudian, Spouse of Bermudian and Non-Bermudian teachers during the period between 2010 to 2023 at Primary, Middle and Senior school level again does not indicate that there is an inherent bias by the Respondent against Bermudian teachers, specifically:
 - i. At primary school level the average percentage of Bermudian teachers between 2010 and 2023 is 92% and non-Bermudian is 4%;
 - ii. At middle school level the average percentage of Bermudian teachers between 2010 and 2023 is 75% and non-Bermudian is 19%; and
 - iii. At senior school level the average percentage of Bermudian teachers between 2010 and 2023 is 52% and non-Bermudian is 39%.

79. The Tribunal notes that the Respondent was unable to provide information regarding what percentage of the Bermudian, Spouse of Bermudian, and Non-Bermudian Teachers were male or female, preventing the Tribunal from comparing the Complainant with other male Bermudian teachers in the Public School System. It also was unable to provide documentation regarding the applicants, their qualifications, and the final hiring decision for each of the years the Complainant applied.

80. The Tribunal finds that the Complainant's claim for Direct Discrimination is not upheld because he has not been able to show on the balance of probabilities that he was unsuccessful in his applications for a full time position because of his sex and national origin and, as such, we do not need to consider the other issues listed above with respect to the Direct Discrimination claim including further consideration of the relevant time limits.

(2) VICTIMIZATION

(A) Did the Respondent have knowledge of the fact that an allegation of a human rights infringement had been made by the Complainant?⁷

(B) Did the Respondent know that they were taking retaliatory steps or objectively showing a retaliatory intent?⁸

(C) Did the Respondent take any retaliatory steps against the Complainant?

81. The Tribunal finds that the Respondent knew the Complainant had brought the First Complaint, and their decision that he was not allowed to work as a substitute teacher because of the then ongoing investigation by HRC into his First Complaint (which was confirmed by its failure to include him on the list of available substitutes on 7 October 2019) amounted to a retaliatory act in breach of the HRA. Whilst the Respondent has not asserted such, it is not a defence that it believed its actions were justified and not motivated by actual intent or that they were ignorant of Section 8.⁹

82. The Complainant's witness evidence (as supported by his wife's witness evidence) that he spoke to Ms Karen Dill on 24 September 2019, and she told him he was not able to work as a substitute teacher because of the ongoing investigation by HRC, is accepted by the Tribunal. This alleged conversation was not refuted by the Respondent and Ms Dill did not attend the hearing to give

⁷ Michael Anthony Harkin v The Commissioner of Police [2015] Bda LR 105 para 41

⁸ Michael Anthony Harkin v The Commissioner of Police [2015] Bda LR 105 para 42

⁹ Michael Anthony Harkin v The Commissioner of Police [2015] Bda LR 105 para 42

evidence despite the hearing being rescheduled to specifically allow for her attendance. Further, despite the Second Complaint being issued on 30 October 2019, the Respondent took no steps to obtain witness evidence from Ms Dill and, as such, the Tribunal has not had the benefit of her testimony.

83. The Tribunal further notes that the Complainant's Counsel wrote to the Respondent's Counsel by letter dated 25 September 2019 (the day after his alleged conversation with Ms Dill) to confirm that if the Respondent followed through with its alleged intention to not allow the Complainant to work due to the ongoing investigation, that this would be a breach of section 8 of the HRA. The Respondent's Counsel replied by letter dated 2 October 2019 to confirm that the Complainant's Counsel's letter had been forwarded to the Respondent and acknowledged that the Complainant had been in contact with the Respondent about his request to be placed on the substitute teachers list. The Respondent subsequently chose not to include the Complainant on the list of substitute teachers which it published on 7 October 2019.

84. The Respondent has suggested that the Complainant, having reached the normal retirement age of 65, was not guaranteed further employment. This is accepted, however, the Tribunal notes Ms Richards confirmed that an individual can apply to work beyond 65 years of age provided that they can obtain a medical certificate confirming their fitness for work. The Tribunal is satisfied based on the evidence provided that the Complainant had applied and had obtained and provided the necessary medical documentation in advance of his request to be added to the 2019 substitute teachers list. Therefore, he should have been included in the published list of substitute teachers and based on the evidence the only logical explanation for him not being included was that he was deliberately excluded and victimised for having issued the First Complaint against the Respondent.

Remedies

85. In light of the Tribunal's findings of fact and our analysis of the law, we conclude that the Respondent has unlawfully victimised the Complainant by virtue of it retaliating against him by not allowing him to work and failing to include him on the October 2019 published list of substitute

teachers in response to the then ongoing investigation by the HRC of the First Complaint and is liable to him for compensation.

86. With respect to the Complainant's claim for loss of wages, we understand that the salary for the role of Allocated Substitute Teacher (based on the average salary between 2010 and 2017) was \$63,055.58 per annum (before deductions). The Complainant has provided a Schedule of Loss dated 8 October 2023. The Respondent has not made any representations with regards to the Schedule of Loss.

87. Furthermore, following the hearing of this matter, the Tribunal requested that the Complainant provide additional information regarding his efforts to mitigate his loss during the period from September 2019 to the present day. The Complainant has subsequently provided a second witness statement dated 26 April 2024 and confirmed that he had been employed on short term assignments with the Bermuda High School ("BHS") during the period from January 2020 to March 2020 earning the total of \$1,478.40 and \$264 respectively. The Complainant also confirmed that he enquired for a role at Mount St. Agnes during 2019/2020 but no role was offered. We also note that the Complainant subsequently in May 2022 secured another role as a Kitchen Porter at Cambridge Beaches.

88. The Complainant is seeking with regards to the Second Complaint loss of earnings equal to \$315,277.90 for the five-year period between 2019-2020 and 2023-24 plus injury to feelings. The Tribunal notes that there is an annual requirement for inclusion on the substitute list. Following the Complainant's 2019 application to be placed on the published substitute list, he did not make any further enquiries with respect to subsequent years. The Complainant in his witness statement stated "*For my part, I did not feel comfortable reaching out again each year because of Ms Dill's comments and because my position should have been clear*". The Tribunal finds that nonetheless, the Complainant was aware of the annual requirement and as such, could have applied again but chose not to. Had he done so, although he would have been required to provide an updated medical certificate etc. the Respondent may have made a different decision especially having been subject to the Second Complaint.

89. Taking into account the Complainant's mitigation of loss, his stated loss of earnings, our view as to the likelihood of the Complainant securing an "allocated" substitute teacher position and the absence of any submissions from the Respondent in respect to his Schedule of Loss, we award damages in the sum of \$61,913.58 equivalent to one year's loss of wages (less sums earned in mitigation).

90. With respect to the Complainant's claim for injury to feelings pursuant to section 20A of the Act, the general principles in relation to assessing compensation for injury to feelings are set out in the decision of *Vento v Chief Constable of West Yorkshire Police*¹⁰ and is as follows:

- a. Awards to injury to feelings are compensatory. They should be just to both parties. They should compensate fully without punishing the tortfeasor. Feelings of indignation at the employer's conduct should be not allowed to inflate the award;
- b. Awards should not be too low, as would diminish respect for anti-discrimination legislation. Society has condemned discrimination and awards must ensure that it seen to be wrong. On the other hand, awards should be restrained, as excessive awards could be seen as the way to "untaxed riches".
- c. Awards should bear some similarity to the range of awards in personal injury cases;
- d. In exercising their discretion in assessing a sum, tribunals should remind themselves of the value in everyday life of the sum they have in mind. This may be done by reference to purchasing power or by reference to earnings;
- e. Tribunals should bear in mind the need for public respect for the level of awards made; and
- f. The level of compensation should relate to the degree of detriment suffered by the complainant.

¹⁰ *Vento v Chief Constable of West Yorkshire Police (No 2)* [2003] IRLR102. This authority was relied upon in the Board of Inquiry Decision of *Sticca v Stonington Beach Hotel Ltd. and Robinson* dated 15 December 2006

91. The UK Court of Appeal in *Vento* identified three broad bands of compensation for injury to feeling, which were updated by *Da'Bell v National Society for the Prevention of Cruelty to Children [2010]* and more recently the UK Employment Tribunal Joint Presidential Guidance issued on 24 March 2023:

- a. The top band is normally between £33,700 and £56,200. Sums in this range should be awarded in the most serious cases, such as where there has been a lengthy campaign of harassment. Only in the most exceptional cases should an award exceed £56,200.
- b. The middle band is between £11,200 and £33,700. This should be used for serious cases that do not merit an award in the highest band.
- c. The lower band is between £1,100 and £11,200. This is for less serious cases, such as where the act of discrimination is an isolated or one-off occurrence. In general, awards of less than £1,100 (\$1,389) are to be avoided altogether, as they risk being regarded as so low as not to be a proper recognition of injury to feelings.

92. The Tribunal has determined that the Complainant should receive an award for injury to feelings in the amount of \$7,198.02¹¹. This falls within the middle of the lower band. The following factors were taken into account:

- a. The Respondent's discriminatory act was one-off with regards to the Complainant;
- b. There was no evidence of any malice towards the Complainant or any other aggravating factors; and
- c. The discriminatory act resulted in the Complainant not being offered employment by the Respondent which had a material impact on the Complainant's ability to earn a living and caused him financial hardship.

Power of Tribunals

¹¹ Based on sterling to US dollar conversion rate as per XE.COM at 15 August 2024

93. Section 20(1) of the Human Rights Act 1981 sets out the following powers of the Tribunal:

"20(1) A tribunal after hearing a complaint shall decide whether or not any party has contravened this Act, and may do any one or more of the following:

(a) Order any party who has contravened the Act to do any act or thing that, in the opinion of the tribunal constitutes a full compliance with such provision and to rectify any injury caused to the complainant by the contravention and to make financial restitution therefor:

Provided that financial restitution shall not be ordered for any loss which might have been avoided if the Complainant had taken reasonable steps to avoid it; or

(b) If it is satisfied that an offence has been committed and that any order that it may make under paragraph (a) will be complied with, refer the complaint to the Director of Public Prosecutions with a view to prosecution; and additionally or alternatively;

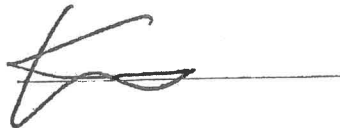
(c) Order any party to the dispute to pay any other party or the Commission costs of the proceedings before the tribunal, not exceeding in aggregate \$1,000.

Order

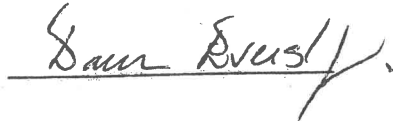
94. For the reasons outlined above, we order as follows:

- (a) The Respondent shall pay the Complainant the sum of \$61,313.58 for loss of wages; and
- (b) The Respondent shall pay the Complainant the sum of \$7,198.01 for injury to feelings.

Dated this 15 day of August 2024



JAMES (JAY) WEBSTER, CHAIR



DAWN EVERSLEY, PANEL MEMBER

Human Rights Tribunal

CASEY SCHULER, PANEL MEMBER



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