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Indexed as: Shahadat v. Northern School of Spa Therapies (No. 3), 2024 BCHRT 120

IN THE MATTER OF THE *HUMAN RIGHTS CODE*,
RSBC 1996, c. 210 (as amended)

AND IN THE MATTER of a complaint before
the British Columbia Human Rights Tribunal

BETWEEN:

Majid Shahadat

COMPLAINANT

AND:

Northern School of Spa Therapies, Northern School of Spa Therapies dba Northern School of
Massage, and Joyce aka Jo Middleton

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:	Devyn Cousineau
Counsel for the Complainant:	Richard Johnson and Olivia Oszkiel
For the Respondents:	No one appearing
Date of Hearing:	January 10, 2024
Location of Hearing:	Via videoconference

I INTRODUCTION

[1] Majid Shahadat is a Muslim man. He was born in Bahrain and is of mixed Arab and Indian descent. He has lived in Canada for 25 years and describes himself as a “proud Canadian”.

[2] In July 2019, Mr. Shahadat booked a massage online with the Northern School of Massage [School]. Later that night, Joyce Middleton, the director of the School, emailed him to ask him for “credentials” and to “certify you are not of the Islamic faith, which as you know has earned a bad reputation for raping and killing of infidels in Canada and elsewhere”. In a subsequent email, she confirmed that the School would not be accepting new male clients because they needed to “protect our students, who happen to be all girls at this time”.

[3] In this decision, I explain why this denial of service is discrimination in violation of s. 8 of the *Human Rights Code*. Ms. Middleton feared Mr. Shahadat for the sole reason that he is, and she perceived him to be, a Muslim man. Throughout this human rights process, she has continued to reiterate the basis of those fears, which are rooted in invidious and harmful stereotypes about Muslim people, including that they are dangerous and subscribe to religious beliefs that are anti-woman and a threat to Western society. As a result of Ms. Middleton’s discriminatory views, Mr. Shahadat was denied access to a service ordinarily available to the public, based on his religion, place of origin, ancestry, and colour. This denial was a violation of his dignity and an affront to BC’s commitment to an equitable society: *Code*, s. 3. At the end of my decision, I order remedies to address this harm as well as costs against the Respondent for improper conduct.

II DECISION

[4] The Respondents had notice of this hearing and chose not to participate. Their representative, Ms. Middleton, asked that the Tribunal consider a written statement from her instead. That statement was entered into evidence and I have considered it.

[5] The issue I must decide is whether the Respondents denied Mr. Shahadat their services for reasons connected to his religion, place of origin, ancestry, and colour: *Moore v. BC (Education)*, 2012 SCC 61 at para. 33. I have no difficulty finding that they did. In reaching this conclusion, I have not found it necessary or helpful to parse Mr. Shahadat's protected characteristics. Though his religion is clearly the primary issue, his experience cannot be disentangled from his identity as a brown Muslim man with Arab and Indian origins.

[6] On January 22, 2019, Mr. Shahadat booked an appointment through the School's website for a "lymphatic drainage massage". He input basic information about himself, including his phone number, email address, and name. He received an appointment confirmation the same day.

[7] That night, Ms. Middleton wrote to him as follows:

Dear Mr. Shahadat:

Thank-you for your patronage of our school. I am sorry to request of you credentials. We rarely accept new clients outside the area of Fort St. John for our own protection.

I am asking you to certify you are not of the Islamic faith, which as you know has earned a bad reputation for raping and killing of infidels in Canada and elsewhere.

I apologize, this is not meant to be offensive, but I have to be watchful over my students as I am sure you will be able to understand.

Yours in sincerity,

Jo Middleton, Northern School of Massage

[8] Mr. Shahadat was understandably shocked and very hurt. This was the first time he had ever had such a response from what appeared to be a reputable business.

[9] On January 25, Ms. Middleton followed up with a second email, explaining that the School would not be accepting "new male clients that we do not know" because "we have to protect our students, who happen to be all girls at this time". She referred him to another male massage therapist instead.

[10] It is apparent from these emails that the School denied Mr. Shahadat a massage appointment at least in part because Ms. Middleton perceived him to be a Muslim man. Ms. Middleton directly invoked the harmful and pervasive stereotype that Muslim men are threatening to women, girls, and non-Muslim “infidels”, and that the Islamic religion is itself a threat: *Elmasry and Habib v. Rogers’ Publishing and MacQueen (No. 4)*, 2008 BCHRT 378 at para. 93. These are classic features of Islamophobia, which is

... defined by the way in which Islam is presented as an unchanging single entity, ‘other’ than Euro-American society, and characterized by barbarism, sexism and violence. This misunderstanding stems from seeing Islam as driven by a single understanding of the Qur’an, thereby creating a sense of fear.

Elmasry at para. 117

[11] At the time that Ms. Middleton initially denied service to Mr. Shahadat, she only suspected he may be Muslim based on his name. After he filed this complaint, this suspicion was confirmed. From that point on, Ms. Middleton has advanced a “defence” that seeks to prove that her fears are rational and based on tenets of Islam which promote violence, particularly against women and children. In doing so, she has not only proven the elements of this human rights complaint but deepened the extent of the harm to Mr. Shahadat.

[12] The thrust of the Respondents’ “defence” to Mr. Shahadat’s discrimination complaint is that Ms. Middleton is entitled and obliged to protect herself and the “young girls” who work at the School. Ms. Middleton cites statistics about the prevalence of sexual assault and asserts that she has “never accepted a male client without references due to the intrinsic danger that women and children face from any male who wishes to physically abuse us”. She argues that **“The God-given Right to Self Protection is a Universal LAW, and rides above Mr. Shahadat’s right to not have hurt feelings”** [emphasis in original]. She says she has Muslim friends; in an earlier submission she explained that they have built trust with her by assuring her “they do not wholly agree with the teachings of the Quran – specially with regards to womens’ and childrens’ inferior rights”. She explains that her risk assessment was informed by “world news, police reports, country statistics, excerpts direct from the Quran”, most recently referring to

“evidence of Islamists killing, raping and torturing Nigerian women and children over Xmas 2023”. She concludes by saying that “Any law that forces women and children to put themselves into the hands of a strange man, who could be a murderer, rapist, human sex trafficker, slaver or whatever ... cannot be a just law”.

[13] To justify her assessment that Mr. Shahadat presented a potential risk to the women and “young girls” who she says work at the School, Ms. Middleton has relied on misinformation from what appear to be far-right, anti-Muslim, internet websites. This assessment rests on stereotype and the vilification of all Muslim people, particularly Muslim men. These are only some examples:

- a. Explaining that “... my refusal [to give a massage] came only from ‘fear’ of bad men who have little or no respect for female rights – bad Muslims having the least respect as per Sharia Law and the worshipping of the Quran where it appears to have originated” (Form 2 - Response to the Complaint, p. 3).
- b. Asking Mr. Shahadat “Are you a Jihadi? How would we know? All we know is you are a man, good? Or maybe a rapist?, & if a Muslim, worship the same bible & attend the same church as Jihadis, whose right it is to rape women” (Form 2 - Response to the Complaint, p. 5, as written). I note that conflating “jihad” with violence and terrorism is another marker of Islamophobia: *Elmasry* at para. 122.
- c. Arguing “The Quran (word of Allah?) which all Muslims bow to and worship, clearly states men have permission to do virtually anything they want with infidel women” (Form 7.2 – Dismissal Application, p. 5).
- d. Submitting articles from unidentified or anti-Muslim websites, with headlines including “UK: Official figures show Muslim rape gangs exploited 19,000 children in past year, actual figure may be much higher”, “Toronto: Hammer-wielding Muslim who killed 64-year-old woman made statements about the Islamic State”, and “Turkey: Violence Against Women Continues to Escalate”.

- e. Arguing “There is no religious discrimination – only fear for those parts of any religion that gives divine sanction to the raping of women and children, such as is in the Quran, which Mr. Shahadat claims to worship in his Islamic faith, which causes us to be fearful of him as a man. It is the human rights violations in the Islamic Quran that we disagree with – not the religion” (letter from Ms. Middleton to Mr. Shahadat’s legal counsel November 10, 2020)
- f. Asking Mr. Shahadat to “denounce” certain parts of the Qur’an and bring a police officer with him before accessing a massage.
- g. Asserting that Islam does not impose a “minimum marriage age to children, although 9 is the age Muhammed used for what we call raping little girls back then, and appears to be acceptable today in some Islamic countries” (Application for Reconsideration).
- h. Arguing that it is Mr. Shahadat’s “duty” to “prove he is trustworthy for our services OR upgrade his religion so people know whether he is friend or foe” and that he is treating them “as though we have no more worth than whores to lay ourselves open to the wishes of any man that wishes to come along” (Application for Reconsideration, as written).
- i. Suggesting, with no basis, that Mr. Shahadat was demanding that “young girls be forced to give him massage in a naked condition behind closed doors” (Exhibit 2).
- j. Arguing that Mr. Shahadat “admits to belonging to a group that advocates in writing that the raping and killing of Infidels is divinely sanctioned” (Application for Reconsideration).
- k. Submitting an article with a handwritten note explaining that “All Muslims are NOT terrorists, but all terrorists are Muslims” (as written).

[14] These arguments bear all the features of discriminatory stereotypes, recently described by the Supreme Court of Canada as follows:

Generally speaking, *all* ungrounded assumptions about human behaviour, including stereotypes, share two characteristics. First, they take a general proposition and apply it to a specific individual, foregoing any assessment of that person's unique characteristics or circumstances. Second, that general proposition is inaccurate or untrue, either in all cases or as applied to that specific individual... However, stereotyping goes one step further and connotes a particular legal meaning that merely generalizing does not: specifically, a meaning rooted in discrimination and inequality of treatment.

R v. Kruk, 2024 SCC 7 at para. 49

Here, Ms. Middleton has taken patently untrue ideas about Islam and Muslim men, rooted in Islamophobia, and applied them to Mr. Shahadat. She then acted on that stereotyping to deny Mr. Shahadat a service customarily available to the public. This is discrimination in violation of the *Human Rights Code*.

[15] It is apparent from Ms. Middleton's submissions that she truly believes that the Qur'an promotes violence against women, children, and non-Muslim people. As such, she believes that Muslim men are likely to commit acts of violence against her and other women and children. It appears these fears and beliefs have been stoked by anti-Muslim websites and news sources which spread misinformation about Islam. Ms. Middleton argues that she was justified in exercising caution with Mr. Shahadat because of the prevalence of sexual violence, an act committed primarily against men against women. She asserts that she was protecting "young girls" and children. Though this may be obvious, it bears noting that there is no evidence that Mr. Shahadat was seeking a massage, or the School was offering massages, from children or "young girls".

[16] It is unlikely that anything I say in this decision can convince Ms. Middleton that her beliefs are based on a profound misunderstanding about the Qur'an and Islam, the second-largest religion in the world. She is free to think these types of thoughts and even hold these views, as repugnant as others might find them. However, if she wants to run a business in British Columbia that serves the public, she cannot use those discriminatory views to decide who she will serve.

[17] The Respondents denied Mr. Shahadat services because he is a Muslim man. The defence they seek to rely on – that he posed a safety risk to their staff – is based solely on stereotypical beliefs about Muslim men, with no factual basis to suggest Mr. Shahadat posed any risk. This is an unjustified violation of s. 8 of the *Human Rights Code*. The next issue is to decide what remedy is appropriate.

III REMEDY

[18] I have found that the Respondents violated s. 8 of the *Code*. I declare that their conduct was discrimination, and I order the Respondents to cease the contravention and refrain from committing the same or similar contraventions: *Code*, ss. 37(1)(a) and (b).

[19] In addition to these orders, Mr. Shahadat seeks compensation for injury to his dignity, feelings, and self-respect, as well as reimbursement of expenses incurred because of discrimination and a further order of costs. I consider each in turn.

A. Compensation for injury to dignity, feelings, and self-respect

[20] A violation of a person’s human rights is a violation of their dignity. The primary way that the *Human Rights Code* addresses this violation is by giving the Tribunal discretion to order compensation for injury to a complainant’s dignity, feelings, and self-respect. The purpose of these awards is to compensate the complainant, and not to punish the respondent.

[21] To determine an appropriate award, the Tribunal generally considers three broad factors: the nature of the discrimination, the complainant’s social context or vulnerability, and the effect on the complainant: *Gichuru v. Law Society of British Columbia (No. 9)*, 2011 BCHRT 185 at para. 260, upheld in 2014 BCCA 396. Ultimately, the amount of injury to dignity damages is “highly contextual and fact-specific”: *Gichuru* at para. 256. While the Tribunal may consider awards in other cases, the exercise is not to identify a “range” established in other cases. Rather, it is to try to compensate a complainant, as much as possible, for the actual injury to their dignity: *University of British Columbia v. Kelly*, 2016 BCCA 271 at paras. 59-64; *Francis v. BC*

Ministry of Justice (No. 5), 2021 BCHRT 16 at para. 176. In this case, Mr. Shahadat seeks an award between \$20,000 and \$25,000.

[22] I begin with the nature of the discrimination. The discriminatory interaction was discrete, comprising two emails from Ms. Middleton explaining that they would not offer Mr. Shahadat a massage unless he could certify he was “not of the Islamic faith”. The discrimination was overt and drew directly on the anti-Muslim stereotypes that fuel Islamophobia in Canada.

[23] The social context of this discrimination is one in which Muslim people in Canada continue to be wrongly associated with terrorism, violence, and misogyny. I take notice of the prevalence and harms of Islamophobia, which continues to be “a cancer in Canadian society”: *Muslim Association of Canada v. Attorney General of Canada*, 2023 ONSC 1923 at para. 46. Views like those relied on and expressed by Ms. Middleton throughout the Tribunal process fuel hatred and can have real consequences for Muslims, including heightened vulnerability to hate crimes and discrimination: *Supan v. Canada (Citizenship and Immigration)*, 2022 FC 488 at para. 24. This context highlights the seriousness of the discrimination, and explains why the encounter impacted Mr. Shahadat’s sense of dignity and security in Canada.

[24] Mr. Shahadat says that, while he had experienced discrimination before, he had never experienced anything remotely like this. He says that it was “truly shocking” for him to learn, after 25 years in Canada, that “there were people with such strong, wrong viewpoints. And not only that there were such people, that they were actually running businesses that provided public services.” He explains how this impacted him as a Muslim man who immigrated to Canada and worked hard to achieve his successes:

... It was really personally very hurtful in a sense because of my background. I’ve had to work extra hard to get where I am ... over and above what someone else would have, because of my religious and my ethnic backgrounds. So, for example, I came here 25 years ago on a scholarship ... I graduated with honours and then for the last 20 years I’ve been working basically nonstop... Not a day without employment. ...

And even here [at my job site], people with my background are the minority. Like you're talking about less than two percent of the people that are here are immigrants that look like me.

So I've actually had to work really, really hard to get to where I am with my company, with the people, with our friends. And the fact that all of that hard work just goes out the window simply because someone makes a call about what you are based on my colour, my religion, my ethnicity – that was what was really hurtful. The fact that I've worked so hard to get to where I am, and nothing matters in the end because one look at my face and they make a judgment call on what kind of person I am. So that was what was really hurtful ...

[25] This evidence highlights that the impact of the discrimination goes beyond the initial shock and hurt of being denied a massage for discriminatory reasons. It destabilizes Mr. Shahadat's sense of belonging in environments where he is often in the minority. It plants the thought that his hard-earned successes are vulnerable to erasure at any point for reasons beyond his control. It causes him to question whether other people he interacts with – at work and elsewhere in his predominantly white community – may be harbouring the same views. In short, it harms his dignity and deprives him of his right to equal access to the public life of this province.

[26] Assessing the appropriate amount to award for an injury to a person's dignity is a difficult exercise. Money cannot undo the damage of discrimination, or fully compensate for its harms. Compensatory damages are just the law's best attempt. They are how the *Code* achieves its purpose of providing redress to people who have been discriminated against: s. 3(e). There is no mathematical formula that calculates dignity. Comparison between cases is inherently imperfect and can be a demoralizing exercise in valuing – or devaluing – a person's pain. Difficult as it may be, the Tribunal must apply its expertise and exercise its discretion to identify an appropriate amount of money to compensate a complainant – as much as money ever could – for the indignity and harms of discrimination.

[27] In all the circumstances of this case, I find that an award of \$10,000 is appropriate.

[28] I appreciate that this is less than Mr. Shahadat has asked for. In ordering this amount, I do not intend to suggest that the discrimination was less than abhorrent, or that the impact on Mr. Shahadat was not serious. However, I must consider that the discrimination itself was discrete, involving a single denial of service. There is not the kind of extensive evidence about ongoing impacts on Mr. Shahadat that supported larger awards in the cases he cites. For example, in *Campbell v. Vancouver Police Board (No. 4)*, 2019 BCHRT 275, there was significant evidence about the impact of discrimination by the police on Deborah Campbell, an Indigenous mother. That impact was grounded in social and historical context about the longstanding troubled history between the police and Indigenous people in Canada, as well as evidence from Ms. Campbell about how the enduring impacts of the discrimination caused her to feel unsafe even three years later: paras. 152-154. This evidence supported an award of \$20,000.

[29] Mr. Shahadat also cites *Brar and others v. BC Veterinary Medical Association and Osborne*, 2015 BCHRT 151. In that case, the Tribunal found that the BC Veterinary Medical Association discriminated against a group of Indo-Canadian veterinarians, including by applying race-based stereotypes about the “credibility and ethics of Indo-Canadians in relation to their veterinary practices”: para. 8. The Tribunal gave various awards for injury to dignity, ranging from \$2,000 to \$35,000. The Tribunal found that the conduct was “long standing” over many years, touching on “every facet of the relationship with the regulatory body and had a significant impact on the complainants’ relationships with their veterinary colleagues”: paras. 1475 and 1480. The Tribunal awarded \$30,000-\$35,000 to complainants who gave evidence about serious ongoing impacts in their lives, including medical problems, ongoing stress over years, and impacts on relationships with family and friends: see eg. paras. 1484-1488 (Dr. Bhullar); paras. 1491-1496 (Dr. Bajwa); and paras. 1514 – 1518 (Dr. Johar). The Tribunal awarded \$10,000 - 15,000 to complainants whose professional reputations and livelihoods were affected: see eg. paras. 1498-1500 (Dr. Bhatia); paras. 1503-1508 (Dr. Brar); and paras. 1524-1528 (Dr. Parbhakar). The Tribunal awarded \$5,000 to a complainant who experienced stress and upset: see paras. 1540-1542 (Dr. Hans). Respectfully, Mr. Shahadat’s circumstances are not equivalent to those giving rise to the higher awards in this case, which included impacts

on professional reputation and livelihood, ongoing mental health impacts, and ongoing impacts on close personal relationships.

[30] Finally, Mr. Shahadat cites *Radek v. Henderson Development (Canada) and Securiguard Services (No. 3)*, 2005 BCHRT 302. In that case, the Tribunal awarded Gladys Radek, an Indigenous woman, \$15,000 after she was subjected to “repeated acts of discrimination” involving security guards at a mall in her neighbourhood. The Tribunal considered the social and historical context of discrimination against Indigenous people, which made the impact of the discrimination “especially severe”: para. 644. As a result of the discrimination, Ms. Radek no longer felt safe returning to the mall, which was one of few options where she could do her shopping and entertainment: para. 642. The Tribunal was satisfied Ms. Radek endured a “severe emotional impact”: para. 641. Again, these circumstances are quite different from those in this case, both in respect of the scope of discrimination and the evidence regarding its severe impact.

[31] In my view, an award of \$10,000 recognizes that the discrimination in this case was, on the one hand, quite discrete and, on the other hand, flagrant. It arose in a social context where Islamophobia continues to place Muslim people in Canada at a heightened risk of discrimination and, as the Federal Court noted in *Supan*, hate crimes. It impacted Mr. Shahadat’s sense of dignity and belonging in Canada. This amount is calibrated to account for the differences in the cases that Mr. Shahadat has relied on, while compensating him for the discrimination he suffered.

[32] I order the Respondents to pay Mr. Shahadat \$10,000 as compensation for injury to his dignity, feelings, and self-respect. I also order them to pay post-judgment interest on this amount in accordance with the *Court Order Interest Act*.

B. Expenses incurred because of discrimination

[33] Section 37(2)(d)(ii) empowers the Tribunal to make an order to compensate Mr. Shahadat for expenses incurred by the Respondents’ discrimination. The purpose of such an

order is to, as much as possible, place the complainant in the position they would have been in but for the discrimination: *Gichuru* at para. 388.

[34] Mr. Shahadat incurred expenses and disbursements as a result of the discrimination. At the hearing, he did not submit any evidence of the amounts. In closing argument, his counsel estimated that he incurred about \$46 in disbursements, and about \$1,000 in legal fees before the filing of the complaint.

[35] Unfortunately, without evidence about the nature and amount of these expenses, I cannot make this order.

C. Systemic remedies

[36] In his Statement of Remedy, Mr. Shahadat also indicated that he would be seeking orders that the Respondents create new policies and procedures and undergo training to ensure this discrimination would not recur. At the hearing, however, his counsel did not seriously pursue these remedies, in part because it is unclear whether the School is still operating.

[37] I do not have enough evidence or submissions before me to make these types of orders in this case.

D. Costs for improper conduct

[38] Finally, Mr. Shahadat asks that I order the Respondents to pay costs for improper conduct in the course of a complaint: *Code*, s. 37(4).

[39] The Tribunal may award costs “against a party to a complaint who has engaged in improper conduct during the course of the complaint”: *Code*, s. 37(4). The purpose of a costs award is punitive: *Terpsma v. Rimex Supply (No. 3)*, 2013 BCHRT 3 at para. 102. It aims to deter conduct that has a significant and detrimental impact on the integrity of the Tribunal’s process: *Oger v. Whatcott (No. 7)*, 2019 BCHRT 58 at para. 246. The threshold to be met on an application for costs is relatively high.

[40] This is the third application for costs arising from Ms. Middleton’s conduct during this complaint process. The first application was unsuccessful. Though the Tribunal Member agreed that Ms. Middleton’s conduct was improper, they declined to order costs, reasoning:

... It appears the Respondents do not appreciate that attributing certain characteristics to all members of a group, regardless of their individual differences is stereotyping, and when related to characteristics protected by the *Code*, is a form of discrimination. Accordingly, I have determined that the appropriate response at this time is to caution the Respondents that if this conduct continues, it will be open to a tribunal member to revisit the costs application. In cautioning the Respondents, I direct them to the OHRC Policy Guide referenced above with respect to stereotyping and prejudice in anticipation of a hearing on the merits.

Shahadat v. Northern School of Spa Therapies and others, 2023 BCHRT 20 at para. 54

[41] This caution was ineffective. Ms. Middleton continued to submit discriminatory materials in this process, leading to Mr. Shahadat’s second application for costs. This one was successful. The Member was satisfied that, notwithstanding the Tribunal’s earlier caution, Ms. Middleton had continued to engage in improper discriminatory conduct, some of which was summarized as follows:

... the Respondents said they relied on the Quran, police statistics files, and Wikipedia, that those who profess to honour the Quran in its entirety are “a risk”, and they did not take the Tribunal’s “admonishment” to mean excluding truth. They said that anyone may choose to follow the Quran as they like to justify raping women and girls, and that Christians, females in particular, must be wary. They said “This is not our fault – Islam needs a hero to step up and clearly separate good Muslims from Jihadists for all, including Mr. Shahadat. WE can do nothing. WE are not to blame.” They say they have a right to know how to defend themselves “against this threat that is always upon us and is known to be worldwide since time began.”

Shahadat v. Northern School of Spa Therapies and others (No. 3), 2023 BCHRT 111 [**Costs Decision**] at paras. 20 and 22

The Tribunal Member ordered the Respondents to pay \$500 in costs, explaining:

I order \$500 instead of the full amount sought [\$2,000] because the complaint process is not over, and the Respondents have an opportunity to conduct themselves appropriately from this point forward. ...

It should now be clear to the Respondents that they are not allowed to include harmful stereotypes about Muslim men in their submissions and communications in this process, and that they are responsible for what they choose to say and include in their submissions and communications. If at any point in the process Mr. Shahadat believes that the Respondents engage in further improper conduct of a similar nature, he may submit a concise application for an additional and increased award of costs. [paras. 44-45]

[42] I turn now to the third application, now before me. The initial issue that arises is what conduct I may properly consider. Mr. Shahadat argues that paragraph 45 of the Costs Decision left the door open for the Tribunal to order a larger costs award as a consequence for Ms. Middleton's improper conduct throughout the course of the complaint, not limited to conduct arising after that Decision. Respectfully, I disagree.

[43] The Tribunal has addressed the Respondents' behaviour up to the point of the Costs Decision. It is not open to me to punish Ms. Middleton again for the same behaviour. Rather, what paragraph 45 leaves open is the possibility of a further, and higher, award if Ms. Middleton persisted in her conduct. For that reason, I focus my analysis on Ms. Middleton's conduct after the Costs Decision.

[44] Mr. Shahadat argues that the Respondents have engaged in further improper conduct after the Costs Decision as follows:

- a. refusing to provide the "full and proper name" for the School;
- b. failing to appear at the hearing of the complaint;
- c. refusing to pay the costs award;
- d. threatening to countersue Mr. Shahadat in BC Supreme Court; and

- e. including further anti-Muslim comments in a written statement submitted for the purpose of the hearing.

He argues that the Respondents have shown themselves to be “ungovernable” in this process in a manner that has impacted its integrity.

[45] In my view, Mr. Shahadat’s first three allegations do not amount to improper conduct warranting a costs award. First, I am not satisfied that the Respondents’ refusal to give Mr. Shahadat the legal name for the School is improper conduct warranting costs. While it may be frustrating, Mr. Shahadat has not pointed me to a rule or principle that requires them to provide this information. Likewise, the Respondents’ failure to attend the hearing did not impact the process. The hearing proceeded as scheduled; the consequence of refusing to appear at the hearing is that I have made this decision without hearing from the Respondents. And finally, the Respondents’ refusal to pay the costs award is a matter for enforcement through the BC Supreme Court. Mr. Shahadat has not cited any authority for the proposition that this is improper conduct which the Tribunal will sanction with an order to pay more costs.

[46] I reach a different conclusion about Mr. Shahadat’s last two allegations. I agree that Ms. Middleton’s threats of legal action against Mr. Shahadat, and her further anti-Muslim statements, continue the concerning pattern of improper conduct that she has demonstrated throughout the process. In my view, this type of improper conduct is of the most serious that the Tribunal must address.

[47] In *Oger*, the Tribunal identified the important purposes underlying its jurisdiction to award costs, which I find are engaged in this case:

The Tribunal's power to award costs is a primary tool by which it can control its process and ensure the protection of the people who come before it... Former Attorney General Geoff Plant described it as the Tribunal's "muscle"...

The Tribunal uses this "muscle" to serve two important purposes: the immediate purpose of managing its process and parties' conduct in an individual complaint and the public purpose of maintaining public

confidence in the Tribunal as an arbiter of human rights... This dual purpose was explained by the Tribunal in *Xiaoling [v. Coral Sea Garment Manufacturing Ltd.]*, 2004 BCHRT 13]:

I have noted above that the primary purpose of an award of costs under s. 37(4) is punitive. Punishment of a wrongdoer, however, is not an end in itself. It also, of course, serves as a deterrent to discourage and prevent others from committing the same or similar wrongful acts. Such deterrence is an important consideration in the context of human rights. It is vitally important that complainants and witnesses know that they are protected by the law when they file a complaint or offer evidence. The elimination or denigration of that protection would have a dangerously chilling effect on the willingness of people to come forward to enforce their rights and, perhaps even more so, the rights of others. [para. 33]

A costs award thus not only punishes a wrongdoer in a given complaint, but also serves to strengthen confidence in the Tribunal's ability to fairly and efficiently resolve disputes. It sends a message to the public that, when they come before this Tribunal, they will be afforded a fair process in which they are treated with dignity and respect. I agree with Ms. Oger that:

Persons who experience discrimination will be dissuaded from availing themselves of the *Code's* means of redress if they know that one of the consequences of pursuing a complaint will be to unleash a torrent of insulting and demeaning public commentary that the Tribunal is powerless to control.

Such public confidence is particularly important for the type of disputes which this Tribunal adjudicates. This is a forum for people who may face disadvantage and discrimination in important aspects of public life. They come to the Tribunal with sensitive grievances which engage their most personal details and characteristics. Any interpretation of s. 37(4)(a) must ensure that the Tribunal remains meaningfully accessible to the people which the Code is intended to protect — people who include the "most vulnerable members of our society": *Zurich [Insurance Company v. Ontario (Human Rights Comm)]*, [1992] 2 SCR 321] at 339.

Oger at paras. 301-303 [some citations omitted]

[48] It is unacceptable that, for Mr. Shahadat, the price of enforcing his quasi-constitutional human rights was that he had to endure further anti-Muslim commentary and threats. Ms. Middleton's repeated attempts to prove the "truth" of her discriminatory views exposed Mr.

Shahadat to inflammatory anti-Muslim propaganda that compounded the impacts of the original discriminatory conduct. Ms. Middleton's submissions required Mr. Shahadat to repeatedly engage with content that baselessly associated him with the most vile acts of violence for no other reason than his identity as a Muslim man. Her submissions persistently denigrated his religion, which is "integrally linked to one's self-definition and spiritual fulfillment": *Syndicat Northcrest v. Amselem*, 2004 SCC 47 at para. 39.

[49] While the most egregious behaviour happened before the Costs Decision, it did not end there. Ms. Middleton threatened to sue Mr. Shahadat in BC Supreme Court for no reason other than this complaint. This can itself be a violation of s. 43 of the *Code*, which protects people bringing forward complaints of discrimination: see eg. *Steele v. Aishwarya Investments and another*, 2014 BCHRT 192 at paras. 294-296. In her written statement submitted in this hearing, Ms. Middleton continued to advance the baseless argument that Mr. Shahadat was demanding a naked massage from "young girls", and that he posed a threat to them as a Muslim man. She referred to "Islamists killing, raping, and torturing Nigerian women and children over Xmas 2023", which has nothing to do with Mr. Shahadat and is clearly intended to support an argument that Islam is a dangerous religion and therefore all Muslim people are threats.

[50] Ms. Middleton's conduct runs counter to the purposes of the *Code*. Rather than creating a climate of understanding and mutual respect, it creates a climate of discrimination and disregard for human dignity. It undermines this Tribunal's mandate to provide a means of redress for victims of discrimination, by sending a message that complainants may, because of their participation in this process, make themselves a target for threats and further stereotyping. The Tribunal repeatedly cautioned Ms. Middleton to correct her conduct, but those cautions have been only partially effective. I am satisfied that she has continued to engage in improper conduct, and that an award of costs is appropriate. I must now decide the amount.

[51] The amount of costs depends mainly on the nature and severity of the party's behaviour, and its impact on the integrity of the Tribunal's process. The Tribunal may also consider factors like the party's ability to pay, their culpability, any explanation for their

behaviour, any other consequences they have already experienced, and any mitigating factors: *Jenkins v. Pacific Law Group and another (No. 5)*, 2019 BCHRT 169 at para. 158; *Kelly v. ICBC*, 2007 BCHRT 382 at para. 91. The amount should be enough to signal that the Tribunal condemns the behaviour, and to deter other people from doing the same thing: *Ma v. Dr. Ianin G. M. Cleator and another*, 2014 BCHRT 180 at para. 285. In this case, Mr. Shahadat seeks an amount of \$2,500 “or higher”.

[52] I exercise my discretion to order the Respondents to pay \$2,500 as costs for improper conduct. This amount accounts for the fact that Ms. Middleton has had multiple opportunities to stop pursuing anti-Muslim “defences” to the complaint and has nevertheless persisted, and escalated to threatening scurrilous legal action against Mr. Shahadat. There is no information before me about the Respondents’ ability to pay the award. Accordingly, I grant Mr. Shahadat \$2,500 as sought, along with post judgment interest, and signal the Tribunal’s intolerance for this kind of conduct in its process.

IV ORDERS

[53] I have found that the Respondents discriminated against Mr. Shahadat based on his religion, place of origin, ancestry, and colour, in violation of s. 8 of the *Human Rights Code*. I make the following orders:

- a. I declare that the Respondents’ conduct contravened s. 8 of the *Code*: *Code*, s. 37(2)(b).
- b. I order the Respondents to cease the contraventions and refrain from committing the same or similar contraventions: *Code*, s. 37(2)(a).
- c. I order the Respondents to pay Mr. Shahadat:
 - i. \$10,000 as compensation for injury to his dignity, feelings, and self-respect: *Code*, s. 37(2)(d)(ii).
 - ii. \$2,500 as costs for improper conduct: *Code*, s. 37(4).

- iii. post judgment interest based on the rates set out in the *Court Order Interest Act*.

Devyn Cousineau
Vice Chair