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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:

Deborah Campbell

COMPLAINANT

AND:

Vancouver Police Board

RESPONDENT

AND:

Union of BC Indian Chiefs

INTERVENOR

REASONS FOR DECISION

Tribunal Member:	Devyn Cousineau
Counsel for the Complainant:	Amber Prince and Myrna McCallum
Counsel for the Respondent:	Jennifer Lamont
Counsel for the Intervenor:	Clea Parfitt and Eileen Myrdahl
Date of Hearing:	September 9 – 12, 2019
Submissions complete:	October 18, 2019
Location of Hearing:	Vancouver, BC

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I INTRODUCTION

[1] Deborah Campbell is an Indigenous mother. Late at night on July 15, 2016, she was out walking her two dogs when she witnessed police stop and arrest her 19-year-old son. The arrest took around 20 minutes, during which time she was roughly and physically separated from her son and blocked from witnessing his arrest. Her questions about what was happening went largely unanswered, and she was warned that her own behaviour could justify a charge for obstruction of justice. These events were traumatic for Ms. Campbell. She says that, by treating her in this manner, the police discriminated against her on the basis of her race, colour, and ancestry, in violation of s. 8 of the *Human Rights Code* [***Code***].

[2] The Vancouver Police Board [**VPB**] denies that the behaviour of its officers amounted to discrimination. It says that Ms. Campbell was interfering with their ability to secure the scene and effect the arrest. It says that the officers' response to that behaviour was measured and appropriate, and there is no evidence capable of proving that Ms. Campbell was treated adversely because of characteristics protected by the *Code.*

[3] The Union of BC Indian Chiefs [**UBCIC**] intervened in this complaint to provide context about the relationship between Indigenous people and the police in BC and make arguments about how that context should inform the Tribunal's understanding of the interaction at the heart of this complaint: *Campbell v. Vancouver Police Board,* 2019 BCHRT 12 [***Campbell***].

[4] I heard this matter over four days. For the reasons that follow, I find that Ms. Campbell has proven her complaint of discrimination.

II ACKNOWLEDGMENT

[5] This was a difficult process for Ms. Campbell. The Human Rights Tribunal is designed to resolve complaints of discrimination arising under the *Code.* It is modeled on a colonial model of justice and concepts of rights that are distinct from, and may be antithetical to, Indigenous values and methods of dispute resolution. The distrust and apprehension that many Indigenous

people may experience coming to this Tribunal, and the legitimate reasons for those feelings, was well articulated by Ms. Campbell's counsel during her opening statement:

> I also want to talk about the power imbalance that's in this room. The National Inquiry Report confirmed the very real power imbalance when Indigenous people are forced to use Canadian colonial processes to seek justice. Kassandra Churcher, the national [Executive Director] of the Canadian Association of Elizabeth Fry Societies, described this dilemma in this way:
>
> > Indigenous women must rely on a justice system that is in no way reflective, or adaptive to, their cultural history and reality. Canada's long history of colonialism and abuse is the core of this issue. When a First Nations, Métis, or Inuit woman appears in court they go before the same justice system that established the reserve system, the residential school system, and continues the removal of children from their families and they ask that court for justice.
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> Métis law professor D'Arcy Vermette describes the power imbalance as "the coloniser's ability to create the laws, interpret the laws, and force Aboriginal people into their courts. Aboriginal people must respond to this power by accommodating the court's language, engaging in a foreign legal system, and debating their rights outside of the context of their own community." In sentencing an Indigenous offender in 2018, Justice Langston of the Alberta Queens Bench describes his own court in *R v. Holmes* as follows:
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> > … She is in a system which is imposed upon Aboriginal people, and I use that word deliberately. Our history, in relation to Aboriginal people, is one of deliberate destruction. We have systematically destroyed their culture, their way of living. We have done everything we can to take from them their sense of spirituality and identity. I'm not saying anything new. You can look in the volumes of reports and studies that have been done on Aboriginal people for decades. Those reports sit, gathering dust, in libraries and Parliament buildings.
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> So it is within this social context that we should be unsurprised that Indigenous people are disproportionately underrepresented in complaints to this Human Rights Tribunal, notwithstanding … a long history of colonization that continues to prejudice Indigenous people based on their race and ancestry. We should be unsurprised as well that the Truth and Reconciliation report called upon the federal, provincial and territorial governments to commit to the recognition and implementation of Aboriginal or Indigenous justice systems.

> But Ms. Campbell doesn't have the option to access an Indigenous justice system. Her only avenue for redress is to submit herself to this colonial process, a system that has been imposed on her that she did not consent to and that she should have no reason to trust, quite frankly.

I acknowledge, and fully accept, this context. I echo Justice Langston's recognition that Ms. Campbell has found herself in a system that is imposed on her, and which she has every reason to distrust: *R v. Holmes,* 2018 ABQB 916 at paras. 2-8.

[6] This acknowledgement cannot change my legislative mandate, my obligations in regard to evidence and procedural fairness, or the legal structure for resolving human rights disputes in this province. As a member of this Tribunal, I remain bound by all of these constructs. I can simply acknowledge, as Justice Langston did, that "the rules that I apply are in the context of a system that has overrun Aboriginal people": *Holmes* at para. 4.

III PUBLICATION BAN

[7] At the outset of the hearing, the parties requested an anonymization order and publication ban in respect of the third parties involved in the arrest underlying this complaint. I granted that order, on the basis that there is no public interest served in publishing those names and doing so would significantly impact the privacy of people who are not directly involved in the complaint. In this decision, I refer to those individuals as "the Son", "the Friend", and "the Alleged Victim". I order that:

> No person shall publish in any document, or broadcast or transmit in any way the identity of the Son, the Friend, or the Alleged Victim.

IV ISSUE

[8] The issue in this case is whether, through the actions of its officers, the VPB discriminated against Ms. Campbell on the basis of her race, colour, and ancestry. To succeed in her complaint, Ms. Campbell must prove that she was treated or impacted adversely in respect of police services, and that her protected characteristics were a factor in that adverse

treatment or impact: *Moore v. BC (Education),* 2012 SCC 61 at para. 33. The VPB did not advance a defence of *bona fide* reasonable justification.

[9] At the outset I must address which of Ms. Campbell's protected characteristics are engaged in this complaint. Ms. Campbell initially identified her family status, race, ancestry, and colour as factors in her adverse treatment. In a letter decision dated January 30, 2017, the Tribunal rejected the complaint for filing on all of these grounds. Ms. Campbell then provided more information, and in doing so abandoned the part of her claim alleging discrimination on the basis of family status. Based on that further information, the Tribunal accepted the complaint for filing on the grounds of ancestry, race, and colour.

[10] In her final submissions, Ms. Campbell argued that the adverse treatment and impact arose from her identity as an Indigenous **mother**. The VPB objected to this framing, on the basis that Ms. Campbell had abandoned her claim of discrimination based on family status and so it is not open to the Tribunal to consider that ground, or its intersection with other grounds, in this complaint. I disagree in part.

[11] In any complaint of discrimination, the Tribunal takes account of all relevant contextual factors to understand whether discrimination has occurred. For example, in a complaint of sexual harassment, the complainant's age may be highly relevant though it is not a ground of discrimination. In a family status complaint about family obligations, it may be relevant that the complainant is a woman even if the complaint is not brought forward based on sex.

[12] I accept that it is not open to me, in light of the procedural history of this case, to find that the VPB discriminated against Ms. Campbell based on her family status. However, it is contrary to the purposes of the *Code* and the overarching aim of getting to the truth to treat Ms. Campbell as if she is simply the sum of various disconnected identities. I have no hope of understanding the events in this complaint if I attempt to ignore Ms. Campbell's identity as a woman and a mother. It is a highly relevant contextual factor which cannot be parsed out of Ms. Campbell's experience.

[13] Notwithstanding the holistic approach I take to Ms. Campbell's identity, I agree that the complaint concerns discrimination on the grounds of race, colour, and ancestry. In this case, as in many, these grounds are grouped together to "define, in a comprehensive way, ethnic identity as a basis of discrimination": *CSWU Local 1611 v. SELI Canada and others (No. 8),* 2008 BCHRT 436 at para. 237. In Ms. Campbell's case, they combine to define her Indigenous identity.[1] There is no dispute that Ms. Campbell is protected against discrimination on these grounds.

[14] Next, I note that the parties have not really taken issue with whether or not Ms. Campbell experienced adverse treatment, or was adversely impacted, by the actions of the police during this encounter. While the VPB argues that the actions of its police were appropriate in the circumstances, it advances this as evidence of a non-discriminatory explanation for the conduct. This focus, in my view, is appropriate. I have no difficulty finding that Ms. Campbell experienced her treatment that night as adverse.

[15] The real issue in this complaint is whether Ms. Campbell's Indigeneity was a factor in how she was treated by the police. I will return to the legal principles underlying this issue after I set out my findings of fact.

V EVIDENCE

[16] The parties and intervenor submitted three forms of evidence in this case: (1) direct evidence from witnesses to the events; (2) expert evidence about the relationship between Indigenous people and the police; and (3) evidence from secondary sources about the social context of this complaint.

[1] In "Colour as a Discrete Ground of Discrimination", the authors make a compelling argument against treating colour as a ground automatically equated or subsumed under race: Joshua Sealy-Harrington and Jonnette Watson Hamilton, "Colour as a Discrete Ground of Discrimination" (2018) 7:1 Can J Hum Rts 1 . None of the parties in this case made any arguments about Ms. Campbell's colour and so I will accept their framing this as a component of her Indigenous identity.

A. Fact witnesses

[17] The witnesses disputed several of the facts underlying this complaint or had different interpretations of the same interaction. I have been required, therefore, to assess the credibility and reliability of their evidence and to make findings of fact based on a balance of probabilities. In doing so, I have applied the principles summarized by Justice Dillon in *Bradshaw v. Stenner*, 2010 BCSC 1398, aff'd 2012 BCCA 296, leave to appeal refused, [2012] S.C.C.A. No. 392, at para. 186:

> Credibility involves an assessment of the trustworthiness of a witness' testimony based upon the veracity or sincerity of a witness and the accuracy of the evidence that the witness provides … The art of assessment involves examination of various factors such as the ability and opportunity to observe events, the firmness of his memory, the ability to resist the influence of interest to modify his recollection, whether the witness' evidence harmonizes with independent evidence that has been accepted, whether the witness changes his testimony during direct and cross-examination, whether the witness' testimony seems unreasonable, impossible, or unlikely, whether a witness has a motive to lie, and the demeanour of a witness generally …. Ultimately, the validity of the evidence depends on whether the evidence is consistent with the probabilities affecting the case as a whole and shown to be in existence at the time … [citations omitted]

[18] I may believe none, part, or all of a witness' evidence, and may attach different weight to different parts of their evidence: *R. v. DR*, [1996] 2 SCR 291 at para. 93. This is an approach I have taken in this case. In this part of my decision, I introduce the witnesses and explain my general findings of their credibility. Later, I make specific findings of fact and explain the basis for preferring one witness' testimony over the other.

[19] I begin by acknowledging that the witnesses were giving evidence about an encounter that lasted about 20 minutes and took place three years ago. As expected, some of their memories have faded over time. To the extent I have rejected a witness' testimony, it is only because I have found their memory less reliable or their perspective to be flawed. I have not found that anyone is deliberately lying or being untruthful. I am satisfied that everyone testified to the best of their recollection.

[20] **Ms. Campbell** testified on her own behalf, holding a sacred eagle feather. Generally speaking, I found her to be a reliable and credible witness. The events in question, while they happened a long time ago, were very significant to her. In my view, this has helped to preserve the clarity of her memory more so than the officers involved, for whom this event was not significant. Her story has been consistent over time and she was frank in acknowledging aspects of her and her son's behaviour that were not ideal.

[21] Ms. Campbell also called **Rhiannon Vining**, a bystander to some of the night's events. Ms. Vining is a high school teacher. I found her evidence credible and reliable. As with Ms. Campbell, the events of that night made an impression on Ms. Vining and her independent recollection was fairly clear, and consistent with Ms. Campbell's. She was forthright when she could not remember certain details, and unshaken in cross examination. She has no direct interest in the outcome of the case.

[22] Finally, Ms. Campbell called **Constable Zachary Fedora**, a police officer involved in the events of the night in question, as an adverse witness. Cst. Fedora has been a police officer for over ten years. He, like other officers who testified, had almost no independent recollection of the night's events. He relied on the police records. He could not recognize Ms. Campbell in the hearing room. I accept he was honest in his testimony, but it was largely limited to the facts apparent on the face of the police records.

[23] The VPB called four police officers to give evidence. Three of those officers were directly involved in arresting Ms. Campbell's son and in dealing with her on the night in question.

[24] **Constable Arthur Szylowski** has been a police officer for 15 years, including five years doing crowd control. He relied mainly on his notes and the police records. He had little independent recollection. I accept that he was as forthright as possible in his testimony, but in my view his recollection is somewhat coloured by his unique perspective during the encounter. As I will explain, Cst. Szylowski was the first officer on the scene and he was working alone. In that role, he was very keenly attuned to possible threats to his safety and primarily concerned

with controlling the scene. In my view, this affected his perception of Ms. Campbell's behaviour and caused him to misremember some of the sequence of events as they unfolded very quickly.

[25] **Constable Evelyn Zheng** has been a patrol officer for seven years. Her testimony was quite detailed but for the most part limited to what was recorded in her police statement, made immediately after the events in question. She had little independent recollection of what happened that night. For example, she testified that Ms. Campbell was yelling but could only remember her specifically yelling one thing – "police brutality". That was the phrase recorded in her statement. I accept that she testified honestly, but her useful evidence was largely limited to what she recorded in her police statement.

[26] **Constable Brendan Ellis** has been a police officer for 13 years. He was the main officer dealing with Ms. Campbell. He had very little police notes to rely on and so testified primarily from memory. He was forthright when he could not remember something and was also candid about his own frustrations and experience during the encounter – even when it did not paint him in a flattering light. He did not recognize Ms. Campbell in the hearing room. I found him to be a credible witness but, as I will explain, I find that he misread the situation with Ms. Campbell. Where his memory conflicted with Ms. Campbell's, I have – with one exception – generally preferred Ms. Campbell's evidence.

[27] **Constable Richard Lavallee** has been with the VPB for over 20 years. He is currently the Indigenous Liaison Protocol Officer. He was not present during the events in question. Rather, he testified about the VPB's Diversity and Indigenous Relations Department, and the training that police receive about working with Indigenous people. There is no dispute about his credibility, and I have accepted all of his testimony as truthful and accurate.

B. Expert evidence

[28] Ms. Campbell called Dr. Bruce Miller as an expert witness to give his opinion about:

a. whether non-Indigenous Canadian society holds prejudicial attitudes or stereotypes about Indigenous people; and

b. whether Indigenous people are especially vulnerable to over policing, racial profiling or other forms of racism by police.

[29] Dr. Miller submitted an expert report and gave oral testimony during the hearing. In an earlier decision, I found two aspects of Dr. Miller's expert report to be inadmissible, and he did not testify about those opinions in the hearing: *Campbell v. Vancouver Police Board (No. 2),* 2019 BCHRT 128 [***Campbell (No. 2)***]. I deferred my decision about the admissibility of the remaining aspects of Dr. Miller's opinion to the hearing. I turn to that issue now.

[30] The Tribunal has discretion to admit evidence that it considers "necessary and appropriate, whether or not the evidence or information would be admissible in a court of law": *Code*, s. 27.2. In the case of expert evidence, the Tribunal applies the usual criteria: relevance, necessity in assisting the trier of fact, the absence of any exclusionary rule, and a properly qualified expert: *R. v. Mohan*, [1994] 2 SCR 9 at para. 17; *White Burgess Langille Inman v. Abbott and Haliburton Co*., 2015 SCC 23 at paras. 16-25. The Tribunal may modify the application of any of these criteria where it is satisfied that the evidence is "necessary and appropriate" in the circumstances of the particular case: *Code*, s. 27.2; *Oger v. Whatcott (No. 5)*, 2018 BCHRT 229 [***Oger (No. 5)***] at para. 22; *Dunkley v. UBC and another*, 2015 BCHRT 100 at Appendix A, paras. 6-20, upheld in 2016 BCSC 1383.

[31] I begin with Dr. Miller's qualifications. A properly qualified expert is one who is "shown to have acquired special or peculiar knowledge through study or experience in respect of the matters on which he or she undertakes to testify": *Mohan* at para. 27. An expert "must not only be qualified generally but must also be qualified to express the specific opinion proffered": *R. v. Orr*, 2015 BCCA 88 at para. 67; *Oger (No. 5)* at para. 27.

[32] Dr. Miller is a professor of Anthropology at the University of British Columbia. He has been learning, training, teaching, and researching in his field for 40 years. He describes his areas of research as "the ethnography and ethnohistory of Indigenous peoples of North America, the nature of the relationships between mainstream society and Indigenous peoples, and public

policy regarding Indigenous peoples". He is the credited author or editor of over 60 peer-reviewed publications.

[33] Dr. Miller has been qualified as an expert in previous proceedings before this Tribunal. In *Radek v. Henderson Development (Canada) Ltd. and others (No. 2),* 2004 BCHRT 340 [***Radek (No. 2)***], he was qualified as an expert respecting "prejudicial and stereotypical attitudes held by mainstream society about Aboriginal people": para. 24. In another case, he was qualified as an expert in "anthropology, public policy with respect to Indigenous people; relations between mainstream society and Aboriginals; and relations between mainstream society and homeless people of Aboriginal descent": *Pivot Legal Society v. DVBIA and another (No. 6),* 2012 BCHRT 23 at para. 18b, upheld in 2018 BCCA 132. Dr. Miller has also been consulted as an expert for public bodies including the Department of Justice and the BC Missing Women Commission of Inquiry. He has worked with uniformed public service officials, including paramedics and firefighters, in relation to the delivery of their services to Indigenous people.

[34] The VPB does not contest that Dr. Miller is an expert with respect to "relationships between mainstream society and Indigenous people". However, it argues that Dr. Miller has no specific expertise with respect to racialized policing. He has not engaged in peer reviewed or other formal study about relations between Indigenous people and police. Significant portions of his report which concerned the police were simply cut and paste from his expert report proffered in *Radek (No. 2),* replacing the words "security guards" with "police".

[35] I find that Dr. Miller is qualified as an expert with respect to all aspects of his opinion. He has had a lengthy career studying, publishing, and teaching about the relationship between Indigenous people and non-Indigenous people, particularly in the Lower Mainland of BC. I accept Ms. Campbell's argument that policing does not occur outside the frame of relations between non-Indigenous and Indigenous populations. Much of Dr. Miller's opinion focuses on general and pervasive stereotypes about Indigenous people, and his view that police officers would not be exempt from prevailing attitudes. Further, his opinion touches on the fact that, throughout history, much of the contact between Indigenous and non-Indigenous peoples has been through the forcible regulation of Indigenous lives, often through the policing arm of the

state. This is within the proper scope of his expertise. I find his opinions set out in response to Questions 1 and 2 in his report, bolstered by his oral testimony, to be necessary and appropriate in light of the issues raised in this complaint. Those opinions are admissible expert evidence.

[36] However, I have found that evidence of relative limited utility in resolving the issues in this case. First, most of the resources cited in Dr. Miller's report were quite dated. The reports and publications he relied on in his opinion were mostly from the 1980s and 1990s. This was surprising, especially given that our understanding of stereotypes and racialized policing have been the subject of much study, academic attention, and evolution over the last twenty years. Many of the parties' secondary sources were more current and therefore more helpful to me. Second, and related, I am troubled that Dr. Miller has simply reproduced significant portions of his report from *Radek (No. 2).* That report was written 16 years ago. It concerned security guards and not police. In my view, this speaks to the fact that Dr. Miller has not tailored his evidence to the issues of this complaint and new developments in our understanding of complex issues over the last 15 years. It makes his evidence less useful than it could have been.

C. Secondary sources

[37] Ms. Campbell and the UBCIC also submitted a number of secondary sources to situate this complaint in its social context. These secondary sources are social context evidence which can, and should, be "used to construct a frame of reference or background context for deciding factual issues crucial to the resolution of a particular case": *R. v. Spence*, 2005 SCC 71 at para. 57, cited in *R. v. Le,* 2019 SCC 34 at para. 83; see also *Calgary (City) v. CUPE Local 37,* 2019 ABCA 388 at para. 45. They assist me to take notice of those social facts which "would be accepted as not being the subject of reasonable dispute": *Le* at para. 88. In my decision, I have relied on some of those sources, which are current and originate from "highly credible and authoritative sources": *Le* at para. 96.

[38] The VPB argues, and I accept generally, that secondary sources should not be used to "bootleg evidence" and that the best evidence will come directly from an expert: *Spence* at

para. 58; see generally discussion in *Cambie Surgeries Corporation v British Columbia (Attorney General),* 2017 BCSC 860. However, it can be onerous for a party to introduce expert evidence, particularly in the context of administrative proceedings before this Tribunal. It should not be necessary for a complainant alleging racial discrimination to bring forward expert evidence to establish the social context for their complaint. Not only is this Tribunal expected to have some expertise in the forces underlying social inequality, but – like a court – it is empowered to take judicial notice of context that reasonable people could not dispute. In the case of Indigenous people, countless authoritative reports and legal decisions establish a context which this Tribunal not only may, but must, bring to bear in complaints alleging discrimination in connection with Indigenous peoples. It is not fair, and contrary to principles of truth and reconciliation, to require Indigenous people to prove this context through expert evidence in every case. Indeed, I note that the VPB, quite properly, does not dispute the historic and troubled relationship between police and Indigenous people which form part of the context for Ms. Campbell's complaint.

[39] In this decision, I refer directly to all secondary sources that I rely on to reach my decision. All of those sources are authoritative records establishing a social context that reasonable persons today could not dispute.

VI FACTS

[40] In this section I set out my findings of fact.

[41] This story began at about 11:30 pm on July 15, 2016. The police received a report that a man was yelling and banging on a door, trying to enter a building. Contrary to first impressions, this man turned out to be the Alleged Victim of an attempted assault. He lived in the building and was trying to get in for safety.

[42] Cst. Fedora was the first officer to attend the building where the Alleged Victim lived. The Alleged Victim told him that he had been walking down the street when he saw the Friend. He said that the Friend pulled a knife and started chasing him, threatening to stab him. The

Alleged Victim escaped. He described the Friend, a young woman, and explained she was last seen in the area with a young man described as “Native”, between 15-16 years old. That young man was Ms. Campbell’s son. He was 19 years old.

[43] Cst. Szylowski arrived next. After talking to Cst. Fedora, he set out in his police vehicle to find the Friend and the Son. He found them a short distance away. This is when Ms. Campbell became involved.

[44] On that night, Ms. Campbell was out walking her two small dogs. It was late at night, and she felt tired and calm. The neighbourhood, a largely residential one, was quiet. As she approached her building, she saw her son walking with a woman she did not recognize. They waved at each other. She noticed a police car in the alley.

A. First few minutes

[45] Moments later, that police car pulled in front of them and Cst. Szylowski got out. It was 11:55 pm. Cst. Szylowski told the Son and Friend that they were being arrested and charged with assault. Ms. Campbell tried to witness the encounter. She asked Cst. Szylowski “what’s going on here?”. He did not answer her. Ms. Campbell describes Cst. Szylowski’s demeanour at this point as neutral and not unkind.

[46] Cst. Szylowski’s perspective of these first few minutes was, understandably, different. He was working alone that night. As the first police officer on the scene, his job was to make the scene safe for the officers and any members of the public. He had very little information about the Son and the Friend, except that the Friend might have a knife and there were grounds for arrest. He says that, when he first approached, the Son and Friend were standing together with Ms. Campbell. While Ms. Campbell says that she was not standing with the others at that point, there is no question that she was very quickly part of the group.

[47] Cst. Szylowski says that he got out of his car and told the Son and Friend they were under arrest for uttering threats and assault with a weapon. He says all three of them immediately became hostile and began yelling at him. The Son in particular was yelling and

swearing, accusing him of police brutality, threatening to sue him, and saying he had done nothing wrong. Cst. Szylowski perceived that it was most important to take custody of the Son first, mainly because as a man he posed a bigger threat. He handcuffed and searched the Son and then called for backup. The Son did not physically resist the arrest. During his search, Cst. Szylowski found a folded pocket knife.

[48] Cst. Szylowski also says that Ms. Campbell was yelling at him at this point, saying he had no right to make the arrest and that he should let the Son go. He says that she was distracting him and creating such a disturbance that passersby were beginning to stop and watch. Ms. Campbell denies yelling. She says that she was standing nearby so that she could see and hear what was happening. The Friend was crying and telling Cst. Szylowski she had been raped and robbed. Cst. Szylowski told Ms. Campbell to leave, and she told Cst. Szylowski that she wanted to witness what was happening.

[49] At this point, Ms. Campbell was afraid for her son. I accept her testimony about this. She described her role as a mother as very much rooted in her Indigenous culture. She explained:

> We refer to ourselves as lifegivers. Because we give life and we have the gift that the Creator has given to us, to provide life and to give life. And so it is my responsibility, my duty as a lifegiver, giving life to my son, that is a lifelong job. And I don't even call it a job because I've been blessed by the Creator to be able to have given life to my son and be able to witness him on a daily basis and be in his presence. We refer to our children as gifts from the Creator. We don't refer to them as a responsibility or when you turn 19 you're out now, you're an adult now.
>
> ... I'm gonna be his mother in the spirit world, I'm gonna be a spirit watching over him. If I have to come back as a poltergeist… that's how strong our bonds are with our kids. We don't kick them out when they're 19. If my son wanted to live with me when he's 40 years old, that would be available to him. And other Indigenous families do that as well. Our duties and responsibilities don't end at 19. I'm still his guardian, I'll be his guardian when I'm in the spirit world still.

In answer to a question about what her "responsibilities as a guardian" means, Ms. Campbell explained:

> That means protecting my son, taking care of my son, that means ensuring his safety as much as I can. It means feeding him, eating with him, talking to him every day, caring about him. It doesn't end when they turn 19 in our culture.

I return to the legitimate fears that Indigenous parents, and particularly mothers, may have about their children interacting with the police below.

[50] In addition to this strong bond with her son, Ms. Campbell testified that she had specific cause to be afraid. She had previously filed a complaint against the police alleging that they used excessive force against him. She was afraid that he might face police retaliation from that complaint.

[51] Ms. Campbell tried to get close to her son. She did not know what she would have to do, whether she would need to call a lawyer, or where the police would be taking him. Cst. Szylowski told her to stay away and not approach. Again, from his perspective, he was alone in a hostile situation. He knew that one or more of the people involved may have knives. Safety was his first priority.

[52] The parties dispute how the Son, Friend and Ms. Campbell were behaving in these first few minutes. Cst. Szylowski describes them as hostile and yelling. Ms. Campbell denies yelling, and says she was simply trying to ask questions.

[53] In my view, it is most probable that all three people involved did have a strong reaction to Cst. Szylowski. All of the witnesses described the Friend as very upset throughout the encounter. She was reporting that she had been raped, and also disclosed that she had PTSD from previous experiences in jail. It is probable that she was scared and had a negative reaction to the arrest. At the same time, there is no dispute that she was cooperative and not physically threatening. She would later voluntarily hand over a folded pocket knife to Cst. Zheng.

[54] The witnesses, including Ms. Campbell, also agreed that the Son was yelling and swearing at the police, though they disagree about whether this started right away or in response to how the police treated Ms. Campbell. I can accept that he was not friendly to Cst.

Szylowski and likely raised his voice in response to his arrest, which he would have perceived as unfair. I do not find he was screaming “police brutality” at that point because nothing physical had happened yet. He was handcuffed without incident, and the Friend and Ms. Campbell were standing freely nearby.

[55] I find that Ms. Campbell was not swearing at Cst. Szylowski. This would have been counterproductive to her objective at that point, which was to ensure her son’s safety. It is also counter to her evidence, which I accept, that she perceived Cst. Szylowski as calm and neutral. However, I do find that she was surprised and scared. She was asking Cst. Szylowski questions about what was happening and inserting herself into the situation. Her voice likely got louder and more desperate when she was not getting answers to these questions. She was also trying to be heard over her son, whose voice was raised, and the Friend, who was upset. The difference between yelling and being loud is largely one of perception and characterisation. From the police’s perspective, Ms. Campbell was yelling. However, in all the circumstances I find it more accurate to say that her voice got louder over the first few minutes of their encounter. The effect was to distract Cst. Szylowski’s attention from his primary aim, which was to handcuff the two suspects and secure the scene. It would have elevated tensions and exacerbated his feeling of being outnumbered.

[56] The combined impact of all of these three strong reactions caused Cst. Szylowski to call for cover.

B. Cst. Ellis and Cst. Zheng arrive

[57] Four minutes later, at 11:59, Cst. Ellis and Cst. Zheng arrived on the scene.

[58] Ms. Campbell was shocked when the other officers arrived. From her perspective, there was no reason for Cst. Szylowski to call for backup. The Son and the Friend were not resisting arrest, and she was not a threat. Ms. Campbell says that, when the cover officers arrived, Cst. Cst. Szylowski said “get her out of here”, referring to Ms. Campbell.

[59] Cst. Zheng testified that, when she arrived, she saw Ms. Campbell yelling at Cst. Szylowski, and that a crowd was drawing to the location. She says she and Cst. Ellis told Ms. Campbell to give them some safe space. She recorded in her notes that Ms. Campbell was being uncooperative and yelling “police brutality”.

[60] Cst. Ellis agrees that, when they arrived, Ms. Campbell was being very loud and verbally abusive, and testified that she was disturbing the peace of the neighbourhood. He could see that Cst. Szylowski was having a hard time dealing with her. He concluded that she was angry and had a vested interest in the scene.

[61] Cst. Szylowski asked Cst. Zheng to take custody of the Friend. He says he had not searched the Friend, because he had been focused on the Son. Cst. Zheng took the Friend aside. The Friend voluntarily surrendered a folded pocket knife. Cst. Zheng then stayed with the Friend, who was very upset.

[62] Cst. Szylowski asked Cst. Ellis to remove Ms. Campbell because she was distracting him and interfering with his ability to make the arrest. He says she was approaching him constantly, yelling at him, and not letting him speak. I have already explained that I do not accept that Ms. Campbell was yelling at that point. I do find that she was persistently, and loudly, trying to get information and that the police officers perceived this as a nuisance and a distraction from their real focus, which was on the arrest of the Son and the Friend. Cst. Szylowski denies saying “get her out of here”, but I accept Ms. Campbell’s testimony on that point. Cst. Szylowski had almost no independent recollection of the events of that night. Given the context, I find it probable he would have used abrupt language to communicate his request and that Ms. Campbell would be more likely to remember the type of words used to refer to her.

[63] Cst. Ellis put his body between Ms. Campbell and the others. He says that he began by trying to talk to Ms. Campbell to figure out what her agenda was. He says she was very angry at the police in general, and voicing concerns about police abuse. He remembers that Ms. Campbell was standing with another woman at that point – which I understand to mean Ms. Vining. In fact, Ms. Vining did not arrive until later. On this point, Cst. Ellis was mistaken.

C. Removing Ms. Campbell

[64] Next, Ms. Campbell was removed from the immediate vicinity of her son's arrest. The parties dispute who was involved in this removal, and how rough it was.

[65] Ms. Campbell testified that Cst. Ellis and Cst. Zheng each grabbed her by an arm and dragged her about 40 feet away from her son. She disagrees with the officers that she was merely "escorted" away, but rather describes this as rough treatment. She felt like an "animal". She says that she had bruising on her arm the next day. She was afraid for her small dogs, who were also being pulled along.

[66] The three officers say that only Cst. Ellis escorted Ms. Campbell away. They say Cst. Zheng was occupied with the Friend and did not touch Ms. Campbell. Cst. Ellis agrees that he led Ms. Campbell by the arm.

[67] I am not persuaded that both Cst. Ellis and Cst. Zheng physically handled Ms. Campbell and removed her from the arrest scene. Ms. Campbell is a petite woman and was not posing any physical threat. Cst. Ellis, who is much larger, would not need the assistance of another officer to physically move her. It is more likely that Cst. Zheng took custody and care over the Friend while Cst. Ellis dealt with Ms. Campbell. This is consistent with Cst. Zheng's notes. The Friend was a priority because she was the primary suspect, and Cst. Szylowski was otherwise occupied with the Son. I am not persuaded that the officers would have left the Friend alone to have two officers remove Ms. Campbell.

[68] That said, I do find that Cst. Ellis used enough force on Ms. Campbell to cause bruising on her arm. In his testimony, Cst. Ellis explained that he was part way through a 12-hour evening shift – his third in a set of four. He was frank in acknowledging that at this point he was frustrated in his interaction with Ms. Campbell and that he lost his patience. I find it was this physical contact that prompted Ms. Campbell's son to begin yelling "police brutality!". The contact was also such that the Friend thought Ms. Campbell was being beaten. This was corroborated by both Ms. Campbell and Cst. Zheng, who had to reassure the Friend that Cst. Ellis was not punching Ms. Campbell. Though the Friend's fears were not true, in my view it

does speak to a third party's perception of how Ms. Campbell was being treated and confirms that the contact was more than a gentle escort down the block. I find that Cst. Ellis roughly took Ms. Campbell by the arm and propelled her down the street, with the dogs trailing behind and barking.

[69] In the meantime, a white neighbour was standing nearby and filming on his phone. The police did not say anything to him. Ms. Campbell was never able to obtain a copy of the recording.

[70] Cst. Zheng and Cst. Szylowski say that Ms. Campbell was taken about 15-20 feet away. Cst. Ellis says she was about 30-35 feet away from the arrest, and Ms. Campbell estimates she was about 40 feet away. In my view, Cst. Ellis and Ms. Campbell would be best placed to know and estimate the distance created between her and her son. Their estimate is most consistent with the map entered as Exhibit 3. I accept that Ms. Campbell was about 35-40 feet away from her son.

[71] From that vantage point, Ms. Campbell says that she could not properly witness the arrest. She says that when she would try to look past Cst. Ellis, he would move to block her view. She describes him as "zealous" and "belligerent". She says they were in a "toe to toe confrontation". Given his attitude, she had no desire to talk or listen to him. Cst. Ellis threatened to charge her with obstruction of justice, to which she responded that he was the one obstructing justice by not letting her hear or witness her son's arrest. She says that Cst. Ellis's tone was "shocking", and that he used big words to intimidate and demean her. He kept telling her to go home, that he was not her son's guardian anymore. Ms. Campbell told him that they were on unceded, occupied land. Ms. Campbell testified that at this point, she was prevented from making sure her son was okay.

[72] Cst. Ellis explains that his objective was to maintain his presence in Ms. Campbell's line of sight. He stayed near to her to deter her from coming closer to the scene. He denies trying to act as a screen to prevent her witnessing the arrest. He did give serious consideration to

arresting her for obstruction but concluded that the arrest was not necessary to stop her from interfering. His warning about obstruction was "drawing a line in the sand".

[73] For the most part, their testimony about these events is consistent. Cst. Ellis inserted his body between Ms. Campbell and her son, and deliberately kept himself in her line of sight. While I accept he was not intentionally blocking her view, that was the effect of his actions. He wanted her focus to be on him, so that she would submit to his commands and change her behaviour.

D. Ms. Vining arrives

[74] This is around when Ms. Vining arrived on the scene. She happened to be in the neighbourhood when she heard the commotion and decided to approach. She describes the scene as loud. Ms. Campbell's dogs were barking. Her son, handcuffed, was yelling "get your hands off her, don't fucking touch my mother!". The Friend was quiet, hunched against a wall with Cst. Zheng. The white neighbour was there, still filming on his phone. Ms. Campbell was being guarded by Cst. Ellis.

[75] Ms. Vining says that Cst. Ellis used his hands to block Ms. Campbell when she moved, likening it to defensive moves in basketball. This further corroborates my finding above, about the effect of Cst. Ellis's conduct being to block her view of the arrest. Ms. Vining describes Ms. Campbell as upset and frustrated. Her voice was raised but she was not screaming. To Ms. Vining, she seemed frustrated, scared, worried, and confused. She was asking the officers where they were taking her son and why he was being arrested. The officers did not answer her questions, telling her that it was none of her concern.

[76] Ms. Vining, to her credit, tried to figure out how she could help de-escalate the situation. In making this calculation, she observed that Ms. Campbell and her son appeared to be Indigenous. She felt, for this reason, that they may be especially vulnerable to the police. Ms. Campbell's dogs were barking and creating a lot of noise, which was contributing to tensions and a feeling of chaos. She approached Ms. Campbell and offered to take her dogs, which Ms. Campbell accepted. She removed the dogs and calmed them down.

[77] Ms. Vining describes Cst. Ellis's demeanour towards Ms. Campbell as frustrated. She says he treated Ms. Campbell like she was a bother and did not take her concerns seriously. He treated her "like she was nothing". His physical presence was "dominating" but not actively aggressive. He was dismissive of Ms. Campbell but actively managing her presence by putting his body between her and her son.

E. Cst. Ellis's assessment

[78] Cst. Ellis describes Ms. Campbell as "the single source of aggravation" at the scene. He was candid that part of his frustration with her was that he could not figure out what her "agenda" was. He ultimately determined that her agenda was to incite a crowd:

> … I felt like she was speaking to the crowd, making a big show of what she was saying to the police. She was encouraging everyone to record everything that was happening. She was saying that it wasn't right and that people should stand up and act. I believe that she was trying to incite and motivate the crowd to either verbally abuse and chime in with her and mirror her sentiments, or to take action in some further way to interfere with the investigation.
>
> … She was a focus for the crowd behind her and she was trying to command everyone's attention. I didn't believe that Ms. Campbell was being respectful of the neighbourhood. I thought she was operating with her own agenda and doing her best to achieve whatever those goals were.

[79] He perceived that she was encouraging people to record on their phones. He says "a few people" had their phones out. He described this as a "typical ploy to egg police on". In his will-say statement made shortly after the incident, Cst. Ellis described Ms. Campbell as "an erratic, uncooperative and verbally hostile woman". His objective was to stop her from causing a disturbance.

[80] I find that Cst. Ellis seriously misinterpreted Ms. Campbell's behaviour on that night. She was not trying to incite a crowd – she was single-mindedly focused on the arrest of her son and finding out as much as she could about what was happening to him. She was not "erratic" – she was scared. Ms. Vining's evidence, which I accept, is that Ms. Campbell's tone cycled through

frustration, resignation, and pleading. Cst. Ellis acknowledged in his testimony that he was likely "stonewalling" Ms. Campbell in response to her questions about her son. This would have exacerbated her feelings of fear and distress and, with it, her behaviour towards Cst. Ellis.

[81] I do not accept that Ms. Campbell was urging people to film on their phones. First, I prefer the evidence of Ms. Campbell and Ms. Vining that the only other person standing at the scene was the neighbour. He was already filming the arrest. Second, while it is possible Ms. Campbell took some comfort in that record, she also testified – and I accept – that she found the whole experience humiliating. She felt self-conscious that her neighbours were walking by, or perhaps looking out their windows. She lived in the neighbourhood and felt ashamed later in leaving her apartment. She worried people would perceive her as a criminal, particularly in light of pervasive negative stereotypes about Indigenous people. I do not accept that she would have wanted, much less incited, her neighbours to become involved by filming or interfering. Ms. Vining testified, and I accept, that Ms. Campbell's single focus was on getting information from the police about her son.

F. The crowd

[82] All of the officers involved described a "crowd forming" at the scene. This was part of the reason, they say, that they felt a sense of urgency to remove Ms. Campbell and take the Son and Friend into custody. Cst. Szylowski called for a police wagon to transport the Friend and Son and told them to hurry up. At 12:02, seven minutes into this interaction, he asked for "one more unit and hurry up wagon".

[83] Cst. Zheng says that, when she arrived, there were less than ten people at the scene but that more people gathered as the moments passed. She remembers the crowd getting "bigger and bigger". Cst. Ellis says there were 8-10 people gathered. He says some people were shouting, showing their support and opposition to the police. None of the other officers or witnesses described people in the crowd behaving in this way. I find this did not occur.

[84] Ms. Campbell and Ms. Vining say that there was no crowd. Aside from the police officers, themselves, and the Friend and the Son, the only other person who was standing there

was the neighbour filming. Ms. Vining said that there were likely people in the vicinity, walking their dogs or passing by, but that they did not stop and watch. Ms. Campbell speculated that there may have been people looking out their windows.

[85] I accept that it was late at night, and the arrest was generating noise during an otherwise quiet time. This would have naturally attracted attention of people passing by, or perhaps people in the adjacent buildings. However, I do not accept that a crowd of people was forming to watch and film. On this, I give the most weight to Ms. Vining's testimony. Ms. Vining was the least emotionally invested in the scene and the best situated to take stock of the situation. She made a deliberate calculation when she arrived about how she could help, which included noting the other people who were there and what they were doing. She saw one neighbour filming and figured it was not necessary for her to do this.

G. Police wagon arrives

[86] At 12:05, the police wagon arrived. Police put the Son and the Friend inside. At that point, the police officers felt it was calmer. Cst. Ellis stopped guarding Ms. Campbell, and she approached the police wagon.

[87] Cst. Ellis testified that, when the police wagon arrived, Ms. Campbell seemed to "lose interest". Again, this is a grave misreading of the situation and consistent with his general perspective that her agenda was to incite a crowd against the police rather than to ensure the safety of her son.

[88] Ms. Campbell asked the driver of the police wagon where they were being taken and could not get any information. At 12:08, Cst. Fedora arrived on the scene as well. She asked him if she could take her son's belongings. Cst. Fedora asked her for ID, but did not press that issue when Ms. Campbell refused to show him ID. Cst. Fedora asked who she was, and she explained that she was the Son's mother. He told her she was not his guardian anymore and that she should go home. Cst. Fedora did not remember any of this interaction. He explained that he is not permitted to release a person's belongings to a witness on the street, for reasons that I

accept – namely, the police are responsible for caring for those items on behalf of the person being arrested and cannot release them to unknown persons.

[89] Generally, Ms. Campbell described the officers' demeanour towards her as condescending, treating her like she was stupid, repeating that she should leave and not be there. When she asked for an incident number, they refused to give it to her. When she threatened to file a complaint against Cst. Ellis, he said "go ahead". Cst. Ellis agrees that was likely his response.

[90] Ms. Campbell also says that the officers refused to give her their badge numbers when asked. The officers all denied doing this and explained that their badge numbers were plainly visible on their uniforms. Cst. Ellis explained that he is aware of police being disciplined for refusing to provide their badge number, and it is not something he would do. I find that Ms. Campbell did ask the officers for badge numbers and they did not answer her. I do not find that this was a deliberate refusal, but rather that the officers were tuning her out and ignoring her. This is consistent with their general attitude towards Ms. Campbell, which was that she was an annoyance. Ms. Campbell used eyeliner from her purse to write badge numbers down as best she could.

[91] Ms. Vining corroborates this account, describing the officers' attitude as "dismissive" and unhelpful. She recalls the officers not answering any of Ms. Campbell's questions about where they were taking her son, why he was being arrested, how long he would be held, and who she should call. She says they treated Ms. Campbell "like a gnat". Ms. Vining tried to get the information herself, but they would not tell her. She says she had the sense that the officers were "sneering" at her and rolling their eyes. Ms. Vining felt that the events had amounted to an "injustice" and she was shaken. This feeling stayed with her in the days following.

[92] Cst. Ellis made a brief note of his encounter with Ms. Campbell because he thought she would likely file a complaint about him. He agrees that this was "not a pleasant evening". He was candid in his admission that he found Ms. Campbell to be difficult:

> I do know that I was very frustrated with Ms. Campbell …

> I did feel she would probably complain about demeanour/conduct – it was a very heated exchange between us and I was not patient, supportive. I can see how she would feel that I was rude.

[93] The Son was taken to the Vancouver jail and released three hours later, when the police confirmed they had no basis to hold him.

[94] In total, this arrest involved four police vehicles and five officers. The entire encounter with Ms. Campbell lasted about 20 minutes.

VII ANALYSIS

[95] For the reasons I have set out above, I find that Ms. Campbell was treated adversely by the police as follows:

a. The officers would not answer her questions about her son;

b. The officers repeatedly told her to go home;

c. Cst. Ellis physically removed her from the site of her son's arrest, and roughly took her about 35-40 feet away;

d. Cst. Ellis stonewalled her in response to her questions, and threatened to charge her with obstruction of justice;

e. Cst. Ellis physically blocked her ability to witness her son's arrest and ensure his safety; and

f. Generally, the officers treated Ms. Campbell as an annoyance and an "erratic, uncooperative" woman rather than a mother with legitimate concerns about her son.

[96] The issue I consider in this analysis is whether Ms. Campbell's Indigenous identity was a factor in this adverse treatment.

[97] There are two ways of looking at this issue. The first is to examine whether Ms. Campbell's Indigenous identity was a factor motivating – consciously or subconsciously – the police's conduct towards her. This is the focus in most race-based complaints against the police, which ask whether officers were operating based on stereotype or prejudice: see e.g. *McKay v. Toronto Police Services Board*, 2011 HRTO 499; *Abbott v. Toronto Police Services Board,* 2009 HRTO 1909; *Phipps v. Toronto Police Services Board,* 2009 HRTO 877; *Maynard v. Toronto Police Services Board,* 2012 HRTO 1220; *Briggs v. Durham Regional Police Services,* 2015 HRTO 1712.

[98] The second way of looking at the complaint is to consider whether, because of her identity as an Indigenous mother, Ms. Campbell has different needs during an encounter with the police than a non-Indigenous person would have. This perspective focuses on the race-based impact of the encounter and recognizes that treating an Indigenous mother the same as anyone else may produce a discriminatory outcome: *Ewert v. Canada,* 2018 SCC 30 at para. 59; *R v. Barton,* 2019 SCC 33.

[99] Ultimately, both of these are ways of getting at the same thing: did the police conduct have the effect of perpetuating the historical disadvantages endured by Indigenous people? If it did, then Ms. Campbell's Indigenous identity was a factor in her adverse treatment and, absent a justification, it was discriminatory: *First Nations Child and Family Caring Society of Canada v. Canada (Minister of Indian Affairs and Northern Development),* 2016 CHRT 2 [***Caring Society***] at para. 403; *Ewert* at para. 66.

A. Legal principles of race discrimination

[100] The basic legal principles are not in dispute.

[101] Ms. Campbell is not required to prove that the officers intentionally or consciously discriminated against her: *Code,* s. 4; *Radek v. Henderson Development (Canada) and Securiguard Services (No. 3),* 2005 BCHRT 302 [***Radek (No. 3)***] at para. 482. There is no evidence before me that could support such a conclusion. In that regard, I accept the officers' evidence about what they thought was motivating their actions and their sincere insistence that Ms. Campbell's Indigeneity had nothing to do with it. However, this finding does not end the matter

because, put simply, discrimination is much more complex than the thoughts at the top of a person's mind.

[102] Racial discrimination is most often subtle and pernicious. While there are no doubt still incidences of deliberate, open, racist attacks, it is more common that people do not express racial prejudices openly or even recognize them in themselves: *Mezghrani v. Canada Youth Orange Network (No. 2),* 2006 BCHRT 60 at para. 28; Ontario Human Rights Commission, *Policy and Guidelines on Racism and Racial Discrimination* (2005) [**OHRC Guidelines**] at p. 21; adopted in *Brar and others v. BC Veterinary Medical Association and Osborne*, 2015 BCHRT 151 at paras. 712-724 and *Francis v. BC Ministry of Justice (No. 3),* 2019 BCHRT 136 at para. 288. In complaints before this Tribunal, there is rarely direct evidence of racial discrimination. Rather, most complaints, like this one, turn on an inference.

[103] An inference of discrimination may arise "where the evidence offered in support of it renders such an inference more probable than the other possible inferences or hypotheses": *Vestad v. Seashell Ventures Inc,* 2001 BCHRT 38 at para. 44; *Abbott* at para. 31. In this case, the question is whether an inference of discrimination is more likely than the VPB's explanation for the officers' conduct. In making this assessment, it is not necessary that the officers' conduct be consistent **only** with the allegation of discrimination and not any other rational explanation: *Phipps* at para. 17. Like any case of discrimination, Ms. Campbell's protected characteristics need only be a factor in her treatment: *Québec (Commission des droits de la personne et des droits de la jeunesse) v. Bombardier Inc. (Bombardier Aerospace Training Center),* 2015 SCC 39 [***Bombardier***] at para. 52.

[104] The subtlety of prejudice, and the availability of inference, does not create a presumption of discrimination: *Richardson v. Great Canadian Casinos and another,* 2019 BCHRT 265 at para. 144. Any inference of discrimination must be rooted in the evidence of a particular case: *Bombardier* at para. 88; *Batson-Dottin v. Forensic Psychiatric Hospital (No. 2),* 2018 BCHRT 246 at para. 82. I agree with the VPB, and indeed it is undisputed, that the social context of this interaction is not enough, on its own, to prove that Ms. Campbell was discriminated against. In

other words, the fact that she is Indigenous and had an adverse encounter with the police does not mean that she was discriminated against.

[105] That said, the facts of this complaint – like many race-based complaints – can only be properly understood within their broader social context: *Campbell* at paras. 16-19. In large part, this is because:

> Individual acts themselves may be ambiguous or explained away, but when viewed as part of the larger picture and with an appropriate understanding of how racial discrimination takes place, may lead to an inference that racial discrimination was a factor in the treatment an individual received.
>
> OHRC Guidelines at p 21

To this I add that a proper understanding of the social context may support a finding that an individual has experienced a race-based adverse impact.

[106] I turn now to the social context of the events giving rise to this complaint.

B. Social context

[107] In complaints involving Indigenous people, I agree with the UBCIC that the Tribunal **must** "take into account the past and present effects of colonialism and historical trauma on Indigenous people without requiring the individual in each case to prove those events and effects". As the Supreme Court of Canada has recognized, no one's history in Canada compares to that of Indigenous peoples: *R v. Ipeelee,* 2012 SCC 13 at para. 77, citing M. Carter, "Of Fairness and Faulkner" (2002), 65 Sask. L. Rev. 63, at p. 71. All decision makers have an obligation to bring awareness of that fact, and the reasons for it, to the cases that come before them.

[108] Indigenous people continue to feel the negative effects of a long history of colonialism and cultural genocide: *Barton* at para. 198; Truth and Reconciliation Commission, *Honouring the Truth, Reconciling for the Future: Summary of the Final Report of the Truth and Reconciliation Commission of Canada* (2015) [**TRC Report**] at p. 135 ff; *R v. Kapp*, 2008 SCC 41 at

para. 59; *Reclaiming Power and Place: The Final Report of the National Inquiry into Missing and Murdered Indigenous Women and Girls* (2019) [**MMIW Report**]. They have been systematically displaced from their lands, excluded from political life, deprived of full cultural expression and suffered intergenerational trauma as a result of residential schools. These legacies continue to contribute to significant disparities between Indigenous and non-Indigenous people in education, employment, income, health, and housing. By referring to "history" and "legacy", I do not mean to suggest that the oppression of Indigenous people is a thing of the past. There is no question that Indigenous people continue to experience racism individually and as a group.

[109] The effect of this history, and patterns of ongoing oppression, is a collective trauma: *Caring Society* at paras. 415-427. I agree with the UBCIC that two facets of this trauma are particularly relevant to this complaint: an ongoing and deep distrust of the police and "the mistrust of any state attempt to interfere in or limit Indigenous parents' ability to parent, protect, and care for their children." I begin with the police.

[110] Indigenous people continue to have a "troubled relationship" with all aspects of the Canadian criminal justice system, including the police: *Ewert* at para. 57; *Barton* at para. 199. As the UBCIC explains, "Canadian law enforcement agencies have always been at the sharp end of colonial policies targeting Indigenous peoples." In their submissions, counsel for Ms. Campbell invoked the examples of Neil Stonechild and the "starlight tours" of the Saskatoon police department, as well as police abuse of Indigenous women and girls in Northern BC: Justice David H. Wright, *The Report of the Commission of Inquiry into matters relating to the death of Neil Stonechild* (October 2004); Human Rights Watch, *Those who take us away: Abusive policing and failures in protection of Indigenous women and girls in Northern British Columbia, Canada* (2013). These are simply examples of a much broader phenomenon. As Dr. Miller testified, Indigenous people are well aware of this violence and their own vulnerability at the hands of the police.

[111] Today, Indigenous peoples are both over and under-policed: *Le* at para. 97. They are overrepresented in the prison system: TRC Report at p. 170. Indigenous women and girls in particular have been victimized and ignored by the police: Carol Martin and Harsha Walia, "Red

Women Rising: Indigenous Women Survivors in Vancouver's Downtown Eastside" (Downtown Eastside Women's Centre, 2019) [**Red Women Rising**]. As a result, many Indigenous people do not trust the police and do not trust that they are safe with the police: OHRC, *Paying the Price: The Human Cost of Racial Profiling* (2017), at pp. 22 ff; *Le* at para. 95; Liqun Cao, "Aboriginal People and Confidence in the Police", (2014) Canadian Journal of Criminology and Criminal Justice 504. The UBCIC described the perception that many Indigenous people have of the police: "the police will not protect us, … our children are not safe should the police approach them, and … our presence in public space might draw the attention of the police and therefore pose a safety risk to us".

[112] None of this is controversial. The Vancouver Police Department itself has recognized the fear and lack of trust which pervade its relationship with Indigenous people: "Breaking Barriers Building Bridges: Vancouver Police Department's Initiatives with Indigenous Peoples" (March 2018) [**Breaking Barriers Report**].

[113] At the same time, and not unrelated, many Indigenous people have cause to fear any state intervention involving their children. For over 100 years, Indigenous people had their children forcibly removed, often by a police officer, and taken to residential schools where they suffered physical, sexual, and emotional abuse. This overlapped with the sixties scoop, a period in which apprehension of Indigenous children by child welfare organizations dramatically increased. Those children were taken from their parents and their communities and placed in predominantly non-Indigenous homes, often far away, severing ties to their culture and identity. Today, Indigenous children remain alarmingly overrepresented in the child welfare system: TRC Report at p. 138; Red Women Rising at pp. 111-115; *Caring Society*. In short, the Canadian state has historically, and persistently, interfered with the ability of Indigenous parents to ensure their children's safety. Indigenous parents have good reason to be fearful when they perceive their children at risk of harm at the hands of the state.

[114] This is the context that framed the interaction when Ms. Campbell encountered the police on the night in question. In any given case, it is not necessary for individual complainants to document or prove how the impact of colonialism relates to their own circumstances. As the

Supreme Court of Canada has recognized, "the interconnections are simply too complex": *Ipeelee* at para. 83. However, in this case, Ms. Campbell did draw a direct link in her testimony. Throughout the encounter, Ms. Campbell felt that she and her son were being overpoliced because they were Indigenous. She testified:

> This is how we've been treated for the past 535 years, due to colonialism and genocide. And the genocide has not stopped, and our oppression has not stopped. It goes on, on a daily basis. 2016, I'm dragged by the police and treated like a piece of dirt. And that's how we've been treated for 500 and something years.
>
> … Especially as Indigenous people, we're stopped by the police, we're questioned by police, we're mistreated by the police, we're intimidated by the police. They use their power and abuse their authority at times. And I'm not saying in every case. I've had good interactions with the police too where I've felt good and I've felt respected. And then I've had the negative interactions with them that bothers me.

[115] Ms. Campbell immediately situated the encounter in a historical and present-day context which caused her to be afraid for her son's safety and perceive the police officers to be acting based on prejudice. Throughout the hearing, Ms. Campbell sought means of assuring her son's safety, by asking that I remind each police witness of their legal obligation not to retaliate against anyone for their involvement in this complaint.

C. Inferring discrimination

[116] I return now to the question in this complaint: did the police conduct have the effect of perpetuating historical disadvantage against Ms. Campbell because she is Indigenous? I find that it did. I reach this conclusion based on a number of considerations.

[117] Given the context I have outlined above, and Ms. Campbell's testimony, I am satisfied that Ms. Campbell had a heightened need to witness her son's arrest and ensure his safety because they are Indigenous. The police conduct which deliberately prevented her from doing this created an adverse impact inherently connected to her Indigenous identity. In addition, the totality of the evidence persuades me that aspects of the police response to Ms. Campbell support an inference that the officers acted subconsciously based on stereotype and prejudice.

I find the police officers were poorly equipped to meet Ms. Campbell's specific needs as an Indigenous mother, that they interpreted her conduct through a lens of suspicion and stereotype, and that they ultimately responded to her in a way that was disproportionate and unjustified by her own behaviour. I expand on these findings in the next sections.

1. Lack of training and awareness

[118] To begin with, none of the officers involved in this encounter came equipped to understand Ms. Campbell. In *Nassiah,* the Ontario Human Rights Tribunal recognized that, "If officers are not appropriately trained on what may constitute racially biased profiling or investigation, they may consciously or subconsciously engage in this form of discriminatory conduct": *Nassiah v. Peel (Regional Municipality) Services Board,* 2007 HRTO 14 at para. 209; see also *Canada (Attorney General) v. Davis,* 2017 FC 159 [***Davis***] at para. 29. I agree.

[119] The only formal training the officers had received from the VPB about policing Indigenous people was a half day course in 2015. Three of the officers had never heard of the Truth and Reconciliation Commission. They had heard of the Missing and Murdered Indigenous Women report, but only through the media and only to the extent of understanding that it was a report about missing and murdered Indigenous women. Most of the officers were generally aware that there may be issues around overrepresentation of Indigenous people in the criminal justice system, or even feelings of animosity by some Indigenous people towards the police. There was some awareness of historical wrongs. However, they each said that they had not encountered that in their daily work. I find this unlikely, given that they all had significant experience policing in neighbourhoods with high Indigenous populations, including Ms. Campbell's. In my view, it is more likely that they are not trained to understand or recognize problematic features of the relationship between police and Indigenous people, or their role in that. This is evidenced by their encounter with Ms. Campbell, which I expand on below.

[120] Cst. Ellis had the most extensive understanding of the historic relationship between Indigenous people and the police. He has a sociology degree and, through that education and his own personal interest, has studied aspects of how Indigenous people fit in the criminal

justice system. He is familiar with how unconscious bias can operate and sees himself as someone less likely to be influenced by those forces. He spoke emotionally about the RCMP's shameful history of stealing children to take them to residential schools. However, at the same time, he recognized that most of his encounters with Indigenous people were negative ones. Asked to describe those encounters and what he learned from them, he testified:

> I've dealt with a lot of Indigenous people through the course of my policing career who live in rent-controlled housing, BC Housing, co-ops. I've dealt with a lot of family situations that are not your typical [nuclear] family. I don't actually understand very well how the family in the Indigenous communicate is often organized. But I see a lot of ad hoc kind of parenting, kids who will be under the care of … aunts and uncles or they would leave home to go live with another Indigenous person. And there seem to be a lot of broken bonds between the parental structure and the teenagers and the kids. So I have seen a lot of impoverishness, or people who apparently are living on disability cheques or support from the government…

This description ties directly to a number of stereotypes about Indigenous people, which I return to below. I find it significant that this is Cst. Ellis's primary exposure to Indigenous people. He was very candid and self-aware in acknowledging that "There's not a lot of depth of understanding there, but there's a lot of exposure."

[121] In cross-examination, Cst. Ellis agreed – appropriately – that these types of repeated negative encounters could feed stereotypes and bias against the group. Because of the deep level on which stereotyping and bias operate, there must be an active strategy for resisting it. Here, there was none.

[122] All of the officers resisted the suggestion that they would treat people differently based on their background. Rather, they said that the proper approach was to treat everyone with respect. In Cst. Fedora's words: "respect given, respect received". Cst. Zheng said that was the "gist" of the Indigenous training that they received. No doubt that is very important and a minimal expectation of policing. However, as I have said, sometimes treating people the same can have discriminatory impacts.

[123] For example, in criminal trials involving Indigenous accused or victims, it may compromise the fairness of the trial to simply approach the trial in the same way as any other. Rather, it may be necessary for a judge to specifically instruct a jury about the long history of colonization and systemic racism against Indigenous people, and stereotypical assumptions about Indigenous women who perform sex work: *Barton* at para. 201. The objective of this exercise would be "to identify specific biases, prejudices, and stereotypes that may reasonably be expected to arise in the particular case and attempt to remove them from the jury's deliberative process in a fair, balanced way, without prejudicing the accused": *Barton* at para. 203. Similarly, in a correctional context, it may be discriminatory to apply the same risk assessment tools to Indigenous and non-Indigenous inmates: *Ewert* at paras. 58-59. In *Ewert,* the Supreme Court of Canada expressly directed actors in the criminal justice system to "abandon the assumption that all offenders can be treated fairly by being treated in the same way": at para. 59. That instruction applies directly here.

[124] Police officers interacting with Indigenous people should come armed with a basic understanding of Canada's colonial history and the collective and individual trauma this history has engendered among generations of Indigenous people, particularly Indigenous women and girls. They should have a basic understanding of how this trauma, and a related mistrust of the police, might manifest in a particular interaction and have some tools for addressing it. When dealing with an Indigenous parent, they should have some understanding of the legitimate fears the parent would have about ensuring the safety of their child against state actors and be equipped to recognize and address those fears. This is necessary to ensure that police interventions are responsive to the particular needs and circumstances of Indigenous peoples and are, therefore, non-discriminatory. None of the police officers involved with Ms. Campbell were prepared to recognize and meaningfully addressed her particular needs as an Indigenous mother.

[125] This is not to suggest that the VPB is making no efforts to improve its relationship with Indigenous people. This was the subject matter of Cst. Lavallee's testimony. His work, and the work of the Diversity and Indigenous Relations Section, is important and impressive. The

department's efforts are outlined the Breaking Barriers Report. I will not set them all out here, except to highlight that they represent the police department's commitment to building trust in the police and repairing its relationship with Indigenous people. However, in this case, this commitment did not manifest in any meaningful awareness by the police officers involved of the context of their interaction with Ms. Campbell and the steps they could take to mitigate or eliminate her fears and mistrust, which were inherently connected to her Indigenous identity.

2. Misunderstanding Ms. Campbell and treating her conduct as suspicious

[126] This ignorance led the officers to misunderstand and misinterpret Ms. Campbell's actions, and consequently perceive her behaviour as suspicious, a threat to their ability to do their job, and a nuisance. Here is where I find subconscious stereotype came into play. Cst. Ellis thought Ms. Campbell was simply trying to incite a crowd against the police, and then "lost interest" when her son was placed in the police wagon. None of the officers was able to recognize that she was a frightened mother trying to protect her son. The question is: why not? The answer allows an inference of discrimination.

[127] There are a number of pervasive stereotypes that continue to be applied to Indigenous people in Canada. These include that Indigenous people are suspicious, not credible, prone to criminality, uncivilized, drunk, lacking a coherent social and moral order, and 'belonging' in prison: *R v. Williams,* 1998 1 SCR 1128 at para. 58; *McKay* at para. 129. In Dr. Miller's expert report, he describes the dual, and mutually reinforcing, stereotypes of "noble savage" and "degenerate or degraded Indian": see also *Radek (No. 3)* at paras. 134-142. These stereotypes "funnel perceptions" and can lead non-Indigenous people – including police officers – to view Indigenous people as inherently dangerous or suspicious. Dr. Miller testified, and I accept, that the operation of stereotypes becomes particularly pronounced in moments that unfold quickly, with little time to think or process information.

[128] That was the situation here. The officers were forced to make decisions and assessments instantaneously. Cst. Szylowski assessed that Ms. Campbell was a nuisance and, in combination with the Son and the Friend, gave him cause to feel unsafe working alone. This

was notwithstanding that the Son was young and did not physically resist arrest, and that he did not view Ms. Campbell as a suspect to any crime or otherwise as a physical threat. Cst. Szylowksi passed Ms. Campbell off to Cst. Ellis, who then ignored the most obvious explanation for Ms. Campbell's conduct and substituted it for a more negative one: that she had an agenda antithetical to the police and which was a hindrance to their ability to work. I find three stereotypes at play in this assessment. First, that Ms. Campbell's conduct was inherently suspicious, such that it could only be explained by an 'agenda' that was hostile to the police. Second, that Ms. Campbell's behaviour was possibly criminal, which triggered the warning about obstruction of justice. And finally, that Ms. Campbell was a threat to the police's ability to do their work. In sum, rather than see Ms. Campbell as a concerned mother, Cst. Ellis viewed her as suspicious, possibly criminal, and a threat.

[129] The same troubling thought pattern was described by the Ontario Human Rights Tribunal in *McKay,* where the Tribunal found that the police officer failed to account for the natural human discomfort in being confronted by the police and jumped instead to a "swift appraisal" that the complainant, an Indigenous man, was suspicious: para. 175. Similarly in *Abbott,* the police failed to understand that the negative reactions of a Black woman were linked to issues of distrust between the Black community and the police: para. 46. In each case, the Tribunal found this was evidence of racial bias.

[130] I repeat that there is no evidence that any of the officers consciously subscribe to invidious stereotypes about Indigenous people. Cst. Ellis in particular clearly cares deeply about performing his work in a non-discriminatory way. He was remarkably self-reflective and, as I have said, demonstrated the deepest knowledge of all the officers about the context of Indigenous people in policing. I am satisfied that he is trying his best to carry out his duties fairly and without animus toward any group. This gives me confidence that he will learn from this experience and continue, as we all must, to approach his work with cultural humility and a commitment to improve.

[131] However, as the Ontario Human Rights Tribunal has observed, stereotypes and prejudice "are part of our historical and social fabric, and are imbued in all of us through social

interactions, the education system, the media and entertainment industries, and other means": *Abbott* at para. 45. Police officers are drawn from this same social fabric and are equally susceptible to unconscious bias and stereotype: Dr Miller's expert report. Repeated negative interactions with Indigenous people, as described by Cst. Ellis, are likely to exacerbate and subtly reinforce such bias and require an even more purposeful approach to eliminate its effect in policing. As I have said, there was no such approach in this case. In my view, the officers' leap to presume that Ms. Campbell's behaviour was suspicious, possibly criminal, and a threat, is evidence that that racial bias was at play.

3. Reaction was not proportionate or responsive

[132] The police explain that their reaction to Ms. Campbell was driven by her own behaviour. They say that they tried to engage with her, but she would not listen or cooperate. She was unwilling to give her name. Her voice was raised. I accept this explanation – to a point. I reject Ms. Campbell's argument that I can infer discrimination from the disparity between how she was treated compared to other white bystanders, namely Ms. Vining and the neighbour who was filming on his phone. Those bystanders were not directly interacting with the police in the way that Ms. Campbell was. There was no need for the police to engage with them and, except in a limited way, they did not. Similarly, it is possible that if Ms. Campbell had behaved differently, the police would have responded to her differently.

[133] However, I do not find that Ms. Campbell's behaviour is a complete and non-discriminatory explanation for the officers' conduct. To begin with, I find that the officers' conduct went beyond what the VPB described as "stern communication", or "a failure to be kind or professional": citing *Brito v. Affordable Housing Societies,* 2017 BCHRT 270 at para. 41. I have outlined the adverse treatment above. It included rough physical contact as well as other deliberate efforts to make Ms. Campbell leave and to submit to police authority.

[134] The full breadth of the police response is not explained by Ms. Campbell's behaviour. Here, I find the circumstances analogous to *Radek (No. 3):*

> I reject the allegation… that Ms. Radek was "causing a disturbance". I have no doubt that, by this point, a loud and noticeable confrontation was occurring. But any disturbance was provoked and precipitated by the actions of the security personnel… Ms. Radek and Ms. Wolfe were simply on their way for a coffee when these events were initiated by [the security guard's] belligerent and obtrusive questioning. Thereafter, while Ms. Radek was undoubtedly angry, she attempted to deal with the incident in a reasonable way, asking to see the supervisor or manager and to see a copy of the policy which entitled the guards to remove her from the mall, and ultimately calling the police to the scene to respond to her allegation of assault. These are not the actions of a person who is "causing a disturbance"; they are the actions of a person who believes she is being treated unfairly and wants to deal with that problem in an appropriate manner. (para. 161)

[135] Likewise here, any disturbance was provoked and precipitated by the actions of the police in refusing to answer Ms. Campbell's questions about her son, dragging her away, and preventing her ability to witness his arrest. Ms. Campbell grew angry, frustrated, and afraid, and all of her actions reflected those feelings. She felt, viscerally, that she and her son were being mistreated because they were Indigenous. She openly expressed those feelings to the officers, voicing concerns about police abuse and reminding them that they stood on unceded Indigenous land. This reaction was rooted in the circumstances. As the Ontario Human Rights Commission has explained,

> … persons who reasonably believe that they are being racially profiled can be expected to find the experience upsetting and might well react in an angry and verbally aggressive manner. A person's use of abusive language requires reasonable tolerance and tact and cannot form the basis of further differential treatment.
>
> OHRC Guidelines at p. 20

Ms. Campbell believed that she and her son were being racially profiled and mistreated by the police. In such circumstances, she is not expected to "sit by meekly": *Briggs* at para. 235.

[136] I accept that Ms. Campbell's behaviour made the officers' jobs more difficult that night. In addition to investigating, apprehending, searching, and arresting two suspects in the middle of the night, they also had to contend with the mother of one of those suspects who was upset

and had a lot of questions. Cst. Ellis frankly admitted that he lost his patience with Ms. Campbell and she would have perceived him as rude. However, while police officers are not required to be perfect, it is fair to hold them to a high standard of conduct: *Davis* at para. 31. They hold a great deal of power: *Abbott* at para. 42. In difficult situations, they are the ones responsible for de-escalating and ensuring a safe outcome: *Maynard* at para. 189.

[137] The officers' interventions with Ms. Campbell had the opposite effect. By moving her away from her son, they increased her fear. When Cst. Ellis physically removed her, this triggered Ms. Campbell's son to react by yelling at the police to "get their fucking hands off her" and "police brutality!". This further entrenched Ms. Campbell's powerlessness to comfort and protect her son. Telling her to go home communicated that she was not important and had no legitimate interest in the arrest of her own son. Refusing to answer her questions and blocking her ability to see how the police were treating him increased her feeling of desperation.

[138] In *Abbott,* the Ontario Human Rights Tribunal described this dynamic as a "manifestation of racism whereby a White person in a position of authority has an expectation of docility and compliance from a racialized person, and imposes harsh consequences if that docility and compliance is not provided": para. 46(f). As Ms. Vining testified, "it didn't need to be this way". I give weight to her sense that an injustice was unfolding. She explained her perspective this way:

> I have worked with … autistic youth that throw their feces at me and bang their heads against the wall. I've worked with youth that have violent outbursts. So [I have] personal experience dealing with … young men who might have physical outbursts … My training is around de-escalation and trying to remain calm in those situations and handling those situations in a way where everybody's bodily autonomy is maintained, and where you have respect for the individuals. And so when I see public service employees such as the police just not doing those things – to me, it strikes me as a bit of laziness because I kind of feel like you're not doing your job. … I am sympathetic to any fear you might feel but that is not an excuse for not doing a good job. And especially, I'm a public education teacher. You know, there are so many things you can do as a teacher and be like – oh well, my job's hard. It's like "yeah, it's a really hard job". But it's your

> job … It's just not really an excuse with any other job, that it's hard… It boggles my mind.

[139] I find that the police officers' conduct towards Ms. Campbell was disproportionate and harmful. This finding leads me to reject the VPB's non-discriminatory explanation for the officers' conduct. It distinguishes this case from those cited by the VPB, including *Infant A v. Board of Education of School District C,* 2018 BCHRT 25. It lends weight to my conclusion that an inference of discrimination is more probable than not, even accepting that the police were responding in part to Ms. Campbell's own conduct.

[140] Finally, in some cases, the decision maker considers whether events would have unfolded in the same way if the person had been white: see e.g. *McKay* at para. 190; *Radek (No. 3)* at paras. 470-471. This is a difficult and inherently hypothetical exercise and so I emphasise I can only give it very little weight. However, I do find myself mystified that the police would think it was appropriate to physically and roughly separate a parent from their child and ask that parent to leave the place where their child is being arrested – no matter how old they are. I would expect the police to answer basic questions and appreciate the reasons for a parent's concern. I think it likely that a white parent, in a middle class or affluent neighbourhood, would receive that basic courtesy. I have difficulty imagining the scene unfolding the same way if the actors in it were white.

D. Conclusion

[141] I find that the actions of the police towards Ms. Campbell had the effect of perpetuating historical disadvantage against her as an Indigenous person. Put another way, her Indigenous identity was a factor in the adverse treatment she received by the police and the adverse impact it caused her. I have reached this conclusion based on a number of factors. As an Indigenous mother, Ms. Campbell had a heightened need to witness the arrest of her son and ensure his safety. She distrusted the police for reasons connected to the long-troubled relationship between Indigenous people and police in Canada. The officers who dealt with her that night were not equipped to understand her unique needs and circumstances as an Indigenous mother. They deliberately and roughly separated her from her son and refused to

answer her questions about what was happening to him. They drew on subconscious stereotypes to assess her as suspicious, possibly criminal, and a threat to their mission. Their reaction to her was disproportionate and made matters worse. As a result, Ms. Campbell was rendered powerless and small, and prevented from ensuring her son's safety. I find that the police's conduct on that night violated s. 8 of the *Code.*

VIII REMEDY

[142] I have found Ms. Campbell's complaint to be justified. I declare that the conduct of VPB's officers was discrimination contrary to the *Code.* I order the VPB to cease the contravention and refrain from committing the same or a similar contravention: *Code,* s. 37(2)(a) and (b).

[143] In addition, Ms. Campbell seeks a number of other remedies. I consider each in turn.

A. Expenses

[144] Section 37(2)(d)(ii) of the *Code* grants the Tribunal discretion to order compensation for expenses incurred by the discrimination. The objective is to place the person in the position they would have been in but for the discrimination.

[145] Ms. Campbell seeks $3,500 for the cost of Dr. Miller's testimony. She explains that his report cost $2,500 and that she will incur $1,000 to compensate him for attending the hearing to testify in person. The VPB opposes this order, on the basis that Ms. Campbell led no evidence to support that she actually incurred this expense and that in any event a significant portion of Dr. Miller's report was inadmissible.

[146] The Tribunal typically orders respondents to compensate complainants for the cost of obtaining expert evidence, where that evidence was necessary to establish the discrimination: *Gichuru v. Law Society of British Columbia (No. 2),* 2011 BCHRT 185, upheld in 2014 BCCA 396; *Cassidy v. Emergency and Health Services Commission*, 2009 BCHRT 110 at paras. 122-124.

[147] In this case, I found part of Dr. Miller's testimony to be necessary and appropriate. In addition, it was the VPB which required Dr. Miller to appear in person. His oral testimony did not add materially to his report, and the VPB asked relatively few questions in cross examination. In these circumstances, I do find it appropriate to order the VPB to compensate Ms. Campbell for at least part of the cost of this evidence.

[148] I do not award the full cost of this evidence for two reasons. First, I found half of Dr. Miller's expert report to be inadmissible: *Campbell (No. 2).* Second, at least half of the admissible part of the report was cut and pasted, with minimal changes, from Dr. Miller's expert report submitted in *Radek.* I do not accept that Dr. Miller reasonably incurred fees arising from that portion of his report.

[149] I order VPB to compensate Ms. Campbell for the cost of Dr. Miller's evidence in the amount of $1,500. This covers the cost of requiring Dr. Miller to appear in person, as well as some amount for the new and admissible evidence in his expert report.

B. Injury to dignity, feelings and self respect

[150] A violation of a person's human rights is a violation of their dignity. That is why s. 37(2)(d)(iii) confers discretion on this Tribunal to award damages to compensate a complainant for injury to their dignity, feelings, and self-respect. The purpose of these awards is compensatory, and not punitive. In exercising this discretion, the Tribunal generally considers three broad factors: the nature of the discrimination, the complainant's vulnerability, and the effect on the complainant: *Torres v. Royalty Kitchenware Ltd.* (1982), 3 CHRR D/858 (Ont. Bd. Inq); *Gichuru* at para. 260. The quantum is "highly contextual and fact-specific", and the Tribunal has considerable discretion to award an amount it deems necessary to compensate a person who has been discriminated against: *Gichuru* at para. 256; *University of British Columbia v. Kelly,* 2016 BCCA 271 [***Kelly***] at paras. 59-64. In this case, Ms. Campbell seeks an award of $35,000.

[151] I begin with the nature of the discrimination. The entire encounter was brief, lasting about 20 minutes. Notwithstanding this brevity, the experience was intense for all involved.

The discrimination rendered Ms. Campbell powerless to ensure her child's safety. Above I described the significance of her bond to her son, which in some ways would be recognized by any parent and in other ways is firmly rooted in her culture. The discrimination included physical contact that was rough enough to cause bruising. The officers treated Ms. Campbell like a "gnat" and deliberately made her small. The discrimination was serious.

[152] Next, I find that Ms. Campbell was particularly vulnerable in this encounter. In any encounter with the police, there is a significant power imbalance. As an Indigenous woman, Ms. Campbell is even more inherently vulnerable to the police. She is physically small and a woman. She had previously made a complaint against the police on her son's behalf, which increased her fear that he would be harmed by them. She has her own health problems. The violation of trust in this encounter was well summarized by Ms. Campbell in her testimony: "Here I am victimised by the very people that say they're put in place to protect us".

[153] Finally, I accept Ms. Campbell's testimony that the impact of the discrimination on her was severe. She never thought she would be so victimized by the police. She explains that, even three years later, she has an enduring sense of being unsafe. She feels particularly traumatized that this mistreatment happened at the hands of people who are supposed to be there to protect her and her family. She says that, in large part because of this experience, she does not feel comfortable calling the police if she needs help. This is a significant impact, given that such reluctance could place Ms. Campbell in danger in the future if she is unable to seek police protection for herself and her family. She feels fearful that the police could arbitrarily harm herself or her family: "if they wanted to, they could kill me right on the street." While this is clearly Ms. Campbell's own subjective belief, it is significant because it illustrates the depths of her ongoing distrust in the police.

[154] Ms. Campbell was publicly humiliated in a neighbourhood she has been a part of for over 20 years. She felt degraded and embarrassed leaving her home afterwards. She feared her neighbours would see her as a criminal or look at her with suspicion. She connected her experience to the experience that Indigenous people have had in Canada over the past 500

years. She felt disposable. As I have said, I find that this discrimination had a serious impact on Ms. Campbell.

[155] I turn now to the appropriate quantum of this award. While no two cases are exactly alike, other cases can provide some guidance.

[156] At the very low end is *Davis,* relied on by the VPB. In that case, the Canadian Human Rights Tribunal awarded the complainant $5,000 after a discriminatory encounter with a customs officer. In awarding this low amount, the Tribunal found that the complainant had failed to prove the extent of her damages: *Davis v. Canada Border Services Agency*, 2014 CHRT 34 at para. 284. That distinguishes this case from Ms. Campbell's, where I find that she has proven she suffered serious injury to her dignity. An amount of $5,000, in my view, is too low.

[157] At the other end of the spectrum is *Maynard,* with an award of $40,000*.* In that case, the Toronto police followed Mr. Maynard, a Black man, into his driveway after hearing reports of a Black male suspect with a gun. The Ontario Human Rights Tribunal found that the police's suspicion of Mr. Maynard was based on racial stereotypes. The encounter quickly escalated to the point where Mr. Maynard was forced onto his knees and surrounded by police. One officer pointed a gun at him. He was detained and forced into a police car. The Tribunal found that Mr. Maynard had suffered a lasting emotional impact. He was terrified, humiliated, and ashamed. He changed his habits and continues to react badly to police. He had been "unable to completely recover his sense of the man he was before the incident": at para. 196. There are some similarities in this case to Ms. Campbell's circumstances. In particular, I have accepted evidence that the incident has had a serious and lasting impact on Ms. Campbell. However, the nature of the discrimination towards Mr. Maynard, which involved a gun, was more extreme. An amount of $40,000 in this case would be too high – and in any event is more than Ms. Campbell is seeking.

[158] Then there are a number of cases in the middle. I will only refer to three.

[159] In *Briggs,* a Black man went out for a sandwich in the night. He was targeted as suspicious by the police and they had several "emotionally charged" encounters. The Ontario

Human Rights Tribunal found the discrimination raised "objectively very serious human rights issues for a police force": para. 282. It also considered, however, that Mr. Briggs' own behaviour was unhelpful and that he had exaggerated the impact that the interactions had on him. With relatively little explanation of the subjective impact on Mr. Briggs, the Tribunal awarded him $10,000.

[160] In *Nassiah,* Ms. Nassiah, a Black woman, was apprehended in a store and accused repeatedly and without foundation of stealing a bra. She was detained in the store for over two hours, 45 minutes of which involved the police. The police officer called her a "fucking foreigner", threatened to take her to jail, and insulted her by asking if she spoke English. The Ontario Human Rights Tribunal found that the incident had a profound and lasting effect on Ms. Nassiah, which led her to seek medical treatment. The Tribunal awarded her $20,000.

[161] Finally, in *Radek (No. 3),* the Tribunal found that a security company had engaged in systemic discrimination against Indigenous people in the International Village mall by profiling them as suspicious, following them, and ejecting them from the public space. Ms. Radek herself suffered repeated acts of discrimination, culminating in an incident where she and her friend were followed, rudely questioned, and told to leave the mall. When she stood up for herself, she was repeatedly told to leave and twice touched without her consent. Ms. Radek was insulted, humiliated, and angry. She never returned to the mall. The Tribunal found the impact on her was "severe" and awarded her $15,000. It is significant, in my view, that this case was decided nearly 15 years ago. Since then, the amount of such damage awards has increased: *Araniva v. RSY Contracting and another (No. 3),* 2019 BCHRT 97 at para. 145.

[162] In Ms. Campbell's case, I find that an award of $20,000 for injury to her dignity, feelings and self-respect is appropriate. This amount acknowledges the seriousness of the discrimination as well as the significant impact that the event had on Ms. Campbell. It takes into account that the discrimination happened in a single brief encounter but struck at the core of what is already a very troubled relationship between Indigenous people and the police. It is, in my view, a very serious thing to deprive any person of a feeling that they are safe with, and

protected, by the police. That is what happened to Ms. Campbell and, as such, she is entitled to an award commensurate with that loss of security and dignity.

C. Systemic remedies

[163] Finally, Ms. Campbell seeks orders that:

> a. The VPB prioritize and implement meaningful policies and training with respect to the Vancouver Police Department's interactions with Indigenous peoples within a reasonable time period, to be determined by the Tribunal; and
>
> b. The VPB further implement an evaluation process to ensure that its policies and training with respect to Indigenous peoples are being adhered to and implemented effectively, respectively, within a reasonable time period, to be determined by the Tribunal.

[164] I will consider these proposed orders under the separate categories of "policies" and "training".

1. Policies

[165] Ms. Campbell seeks an order that the VPB implement "meaningful policies" about its interactions with Indigenous peoples and evaluate such policies. The VPB objects to these orders on the basis that Ms. Campbell had failed to identify them in her Statement of Remedy and, as such, they amount to a new claim for relief. Further, it argues that this individual complaint "cannot be used to launch a full-scale complex review of all of the policies and practices of the VPD" and that such an award would be disproportionate to the actual breach.

[166] I agree with the VPB that it would not be appropriate to make this order in circumstances where Ms. Campbell did not identify any policy-based remedies in her Statement of Remedy. Notwithstanding, as Ms. Campbell points out, that Statement was filed 17 months before the hearing, she had opportunities to amend it as the parties completed disclosure and she gained a fuller picture of her complaint. This type of order would be a significant one, and

fairness requires that the VPB have notice that Ms. Campbell would be seeking it in advance of the hearing.

[167] In any event, I am not satisfied that I have sufficient evidence about the scope of the VPB's policies concerning Indigenous people, how those policies influence police behaviour, and where particular deficiencies may lie, to make such an order.

[168] I deny the request for orders relating to the VPB's policies.

2. Training

[169] Ms. Campbell also seeks orders that the VPB implement a "meaningful" training process, including evaluations of the effectiveness of that training, respecting police encounters with Indigenous peoples. This was an order she specifically sought in her Statement of Remedy.

[170] The VPB objects to these orders. It argues that any requirement to undertake "meaningful" training is unclear and, in any event, it already trains members on Indigenous cultural awareness.

[171] In this decision, I have specifically found that the officers' lack of training and preparedness laid the groundwork for discrimination. The VPB has made a public commitment to build bridges with Indigenous communities and, under the leadership of Cst. Lavallee, is making headway. However, it is clear that more needs to be done to ensure its own officers are not out in the streets undermining that work.

[172] The half day of cultural awareness training that new recruits receive, and that some members of the department received in 2015, is insufficient. The officers involved in this case could remember very little about that training, except that they should treat Indigenous people with respect. Cst. Ellis agreed he would benefit from more training. He testified:

> Would it have been to my benefit to have had more immersion in the darker side of Indigenous history in Vancouver and the Lower Mainland and across Canada? That would have been of great benefit. I don't think enough time [was spent on this]… In my recollection, it was a minor

> component of the training that we did. But it would have … been to my benefit, and my classmates' benefit, if it had been a bigger component.

[173] In considering this issue, I have in mind two powerful observations. The first is from the *Barton*, where Justice Moldaver wrote:

> … in my view, our criminal justice system and all participants within it **should take reasonable steps to address systemic biases, prejudices, and stereotypes against Indigenous persons — and in particular Indigenous women and sex workers — head-on**. Turning a blind eye to these biases, prejudices, and stereotypes is not an answer. (para. 200)

This sentiment echoes several very similar pronouncements from our highest Court, many of which I have referred to in this decision.

[174] The second powerful observation is from the National Inquiry into Missing and Murdered Indigenous Women and Girls. After concluding that human rights abuses committed and condoned by the Canadian state amounted to genocide against Indigenous women, girls, and 2SLGBTQQIA people, the National Inquiry observed:

> The steps to end and redress this genocide must be no less monumental than the combination of systems and actions that has worked to maintain colonial violence for generations.
>
> MMIW Report, p. 167

[175] I acknowledge that this is a complaint of individual discrimination against Ms. Campbell arising from a single encounter. However, as I have explained, it is entirely consistent with a long and continued history of discrimination by police against Indigenous people. The forces that led the parties to this place have been a long time in the making and will require a significant effort to undo. In my view, more training for Vancouver's police officers flows naturally from the findings of discrimination I have made in this case and is necessary to ensure that my orders that the VPB cease this discrimination and refrain from further contraventions are meaningful.

[176] As such, I order that the VPB train any officers who are engaging with Indigenous people to ensure that they are able to do so without discrimination. At a minimum, that training should be designed to ensure that police officers:

a. Understand how stereotypes operate in a policing context;

b. Know the particular stereotypes that are applied to Indigenous people;

c. Have tools to address and minimize the effects of those stereotypes in their encounters with Indigenous people; and

d. Understand and be prepared to address the particular needs that Indigenous people may have in an encounter with the police, arising from the long legacy of colonialism and ongoing distrust of the police.

[177] That training should be designed and implemented within one year of this order and recur annually for a period of five years. It should be evaluated and adapted on an ongoing basis. After that point, I encourage the VPB to continue to give such training the priority and urgency that the circumstances require.

IX CONCLUSION

[178] I have found Ms. Campbell's complaint of discrimination justified. I order as follows:

a. Pursuant ss. 37(2)(a) and (b) of the *Code*, I declare that the VPB's conduct was discrimination contrary to the *Code*, and I order it to cease the contravention and refrain from committing the same or a similar contravention.

b. Pursuant to s. 37(2)(i), I order the VPB to train any officers who are engaging with Indigenous people to ensure that they are able to do so without discrimination. That training should be designed and implemented within one year, and be conducted annually for a period of five years. It should be evaluated and adapted

as appropriate. At a minimum, the objective of such training should be to ensure that police officers:

i. Understand how stereotypes operate in a policing context;

ii. Know the particular stereotypes that are applied to Indigenous people;

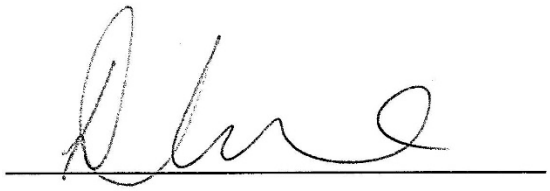
iii. Have tools to address and minimize the effects of those stereotypes in their encounters with Indigenous people; and

iv. Understand and be prepared to address the particular needs that Indigenous people may have in an encounter with the police, arising from the long legacy of colonialism and ongoing distrust of the police.

c. Pursuant to s. 37(2)(d)(ii), I order the VPB to pay Ms. Campbell $1,500 as compensation for expenses incurred as a result of the contravention.

d. Pursuant to s. 37(2)(d)(iii), I order the VPB to pay Ms. Campbell $20,000 as compensation for injury to her dignity, feelings, and self-respect.

e. I order the VPB to pay Ms. Campbell post-judgement interest on the amounts awarded until paid in full, based on the rates set out in the *Court Order Interest Act.*



Devyn Cousineau, Tribunal Member