

Date Issued: July 29, 2022

File: 18950/CS-001367

Indexed as: LaFleche v. NLFDAuto dba Prince George Ford (No. 2), 2022 BCHRT 88

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:

Melissa LaFleche

COMPLAINANT

AND:

NLFDAuto dba Prince George Ford

RESPONDENT

REASONS FOR DECISION

Tribunal Member:	Amber Prince
On their own behalf:	Melissa LaFleche
Counsel for the Respondent:	Kimberly Pavao
Hearing Dates:	February 28 – March 2, 2022
Written Closing Submissions	March 24, 2022
Location of Hearing:	Video conference

I INTRODUCTION

[1] For over 30 years the law in Canada is clear: a pregnancy should not lead to work-related disadvantages: *Brooks v. Canada Safeway Ltd.*, [1989] 1 SCR 1219 [**Brooks**].

Discrimination based on pregnancy undermines substantive equality along gendered lines. In this case, Mellissa LaFleche suffered a work-related disadvantage because she was pregnant. She filed a complaint to this Tribunal seeking redress.

[2] Mellissa LaFleche started working at NLFD Auto Ltd. dba Prince George Ford [**Ford**] in 2015. She was promoted to marketing manager around December 2016. In May 2018, during the later stages of her pregnancy, she went on a maternity leave. Ms. LaFleche gave birth to her child, and took up the responsibility of caregiver to her child. She says that while on maternity leave, Ford dismissed her from her marketing manager position. She says Ford dismissed her because it preferred the employee who covered the marketing manager position, while Ms. LaFleche was on leave. Ms. LaFleche says that Ford never offered her another position. As a result, she never returned to work at Ford at the end of her maternity leave on July 2, 2019, and lost her career at Ford. Ms. LaFleche says that Ford's conduct is discrimination, based on sex and family status, contrary to s. 13 of the *Human Rights Code* [**Code**].

[3] Ford denies that it dismissed Ms. LaFleche from her position. Rather, Ford says that it planned to return Ms. LaFleche to her marketing manager position when she returned from maternity leave, but that of some her duties might change. Ford says that Ms. LaFleche should have returned to work on July 2, 2019, but instead, she chose to abandon her job.

[4] To succeed in her claim of discrimination under s. 13 of the *Code*, Ms. LaFleche must prove, on a balance of probabilities, that: (1) she has the protected characteristics of sex and/or family status; (2) she experienced an adverse impact in her employment; and (3) that her sex and/or family status were factors in the adverse impact she experienced in her employment: *Moore v. British Columbia*, 2012 SCC 61 [**Moore**] at para. 33.

[5] There is no dispute that Ms. LaFleche is protected in her employment based on her pregnancy and status as a parent. The main issue in this complaint is whether Ford's acts or

omissions adversely affected Ms. LaFleche in her employment. That issue turns on whether Ford removed Ms. LaFleche from her marketing manager position and, if so, whether it constructively dismissed her from her employment. If so, the issue is whether her sex and/or family status were factors in this adverse impact. Finally, if Ford's conduct was discrimination, the issue is the appropriate remedy for Ms. LaFleche.

[6] For the reasons that follow, I have found that Ford removed Ms. LaFleche from her marketing manager position and constructively dismissed her from her employment. I have found that, in so doing, Ford discriminated against Ms. LaFleche based on sex and family status contrary to s. 13 of the *Code*. As a result of that discrimination, Ms. LaFleche is entitled to compensation for: injury to her dignity, feelings and self respect [**injury to dignity**]; and lost wages and maternity/parental benefits. In Part II, I outline the evidence and context for my analysis of the issues. In Part III, I set out my analysis and reasons for my finding of discrimination. In Part IV, I set out Ms. LaFleche's remedies. In Part V, I confirm the orders I have made.

II EVIDENCE AND CONTEXT

[7] In this part of the decision I outline the evidence I heard and set out the context for the issues I decide.

A. The Evidence

[8] I have reviewed and considered all of the evidence admitted at the hearing. I set out only that evidence and findings of fact required to come to my decision.

[9] In terms of witnesses, Ms. LaFleche testified on her own behalf. Ford called three witnesses: Jessica Callaghan, Cheryl Riddle, and Chris Wall. Ms. Callaghan is the employee who replaced Ms. LaFleche while Ms. LaFleche was on maternity leave. Mr. Wall became the general manager at Ford while Ms. LaFleche was on maternity leave. Mrs. Riddle is the senior controller at Ford and manages Ford's financial issues.

[10] All of the witnesses relied on and adopted affidavit evidence that they had tendered as part of Ford's application to dismiss Ms. LaFleche's complaint: *LaFleche v. NLFD Auto Ltd. dba Prince George Ford*, 2020 BCHRT 207 [**LaFleche (No. 1)**]. The affidavits were admitted as evidence at the hearing as a matter of efficiency, and the parties had the opportunity to test the affidavit evidence through cross-examination.

[11] Where necessary to do so, I have assessed credibility applying the principles summarized in *Bradshaw v. Stenner*, 2010 BCSC 1398, affirmed in 2012 BCCA 296, leave to appeal refused, [2012] S.C.C.A. No. 392, at para. 186; and *Hardychuk v. Johnstone*, 2012 BCSC 1359 at para. 10.

B. Context

1. Ms. LaFleche's position and duties at Ford before maternity leave

[12] Ms. LaFleche started working full-time at Ford as a social media manager in 2015. In April 2017, then general manager, FN, promoted Ms. LaFleche to a new full-time position as the marketing manager. The new position came with a salary increase: Exhibit 1. The new position was part of Ford's evolving marketing strategy.

[13] When Ms. LaFleche was promoted to marketing manager, her specific job duties were not set out in writing. However, I accept her evidence that her duties included overseeing and organizing internet and event-driven campaigns. She also oversaw the work of the merchandizer position, and reported to the general manager. I also accept that Ms. LaFleche was successful in her work. Her job performance, before going on maternity leave, is not at issue in this case.

[14] Around August 2017, FN retired and SM became the general manager at Ford. Adjustments were made to Ford's marketing strategy in response to SM's new vision and goals. I accept Ms. LaFleche's evidence that she adjusted her work accordingly.

2. Ms. Callahan is hired to provide maternity leave coverage

[15] Around March or April 2018, Ford hired Jessica Callahan to cover for Ms. LaFleche's upcoming maternity leave, as the marketing manager. Ms. LaFleche was involved in Ms. Callahan's hiring and training for the position until Ms. LaFleche's maternity leave in May 2018.

[16] There is a dispute in the evidence about whether the position Ms. Callahan was filling was temporary or whether she would continue after Ms. LaFleche returned from maternity leave. Ms. LaFleche's evidence was that Ms. Callahan was hired temporarily to fill the marketing manager position while Ms. LaFleche was on leave. Ms. LaFleche says that Ms. Callahan accepted the marketing manager position knowing it was a temporary position to cover Ms. LaFleche's maternity leave only. Ms. Callahan says that, at the interview for the marketing manager position, SM and Ms. LaFleche told her that she and Ms. LaFleche would share "marketing department duties" with Ms. LaFleche, when Ms. LaFleche returned from maternity leave. Ms. Callahan's evidence was that, at the time of the interview, it was unclear how the marketing department duties would be split between Ms. Callahan and Ms. LaFleche upon Ms. LaFleche's return from maternity leave. Ms. LaFleche says that it was never discussed at the interview whether Ms. Callahan would stay on at Ford, and if so what her role would be.

[17] I find that Ms. Callahan was expressly and temporarily hired to fill Ms. LaFleche's marketing manager position in April 2018. At the same time, I accept that Ms. Callahan believed she might be able to stay on at Ford, once Ms. LaFleche returned, if Ford had capacity to keep Ms. Callahan on. I do not find that either SM or Ms. LaFleche told Ms. Callahan that she would stay on at Ford permanently and split marketing duties with Ms. LaFleche on her return from maternity leave. I make this finding for the following reasons.

[18] First, Ms. LaFleche was the sole marketing manager at Ford, and Ms. Callahan also became the sole marketing manager at Ford. If there was a need for two full-time employees to split the marketing manager duties, Ford would have hired two full-time marketing managers. Instead, Ms. LaFleche acted as the sole marketing manager position at Ford from April 2017

until her maternity leave in May 2018. Ms. Callahan was also the only marketing manager at Ford from May 2018, up until at least February 28, 2022, the date of the hearing.

[19] Second, Ms. Callahan was hired for the express purpose of covering Ms. LaFleche's sole marketing manager position while Ms. LaFleche was on maternity leave. It does not make sense that Ford would have hired Ms. Callahan for any other purpose, given the timing of Ford hiring Ms. Callahan, and Ms. LaFleche's direct involvement in hiring and training Ms. Callahan for the marketing manager role.

[20] Third, a finding that Ms. Callahan was hired on a temporary basis is most consistent with what happened at a February 8, 2019 meeting about Ms. LaFleche's return to work. I make findings about what was said at that meeting below. There is no dispute that Ms. LaFleche was told at that meeting that Ms. Callahan would stay on in the marketing department. Ford giving Ms. LaFleche this information at the February 8, 2019 meeting is most consistent with a decision at that time to keep Ms. Callahan on rather than a decision made when hiring her that Ford would continue to employ her after Ms. LaFleche's maternity leave. Further, I accept that Ms. LaFleche was shocked by what she was told about Ms. Callahan staying on. Ms. LaFleche was directly involved with interviewing, hiring, and training Ms. Callahan. Ms. LaFleche would have understood the nature of the position being filled by Ms. Callahan, in particular, whether Ms. Callahan would stay on and share managerial duties. I accept Ms. LaFleche's evidence that the position was a temporary one and that this was conveyed to Ms. Callahan.

3. Ms. LaFleche goes on maternity leave

[21] In May 2018, Ms. LaFleche went on maternity leave early for medical reasons related to her pregnancy: Exhibit 2. Her child was born in June 2018, and she continued to be on maternity leave with an expected return to work date of July 2, 2019.

[22] Ms. Callahan filled the marketing manager position for the entirety of Ms. LaFleche's maternity leave.

[23] In September 2018, Chris Wall replaced SM as the general manager at Ford. Mr. Wall took over the supervision of the marketing manager position. I accept Mr. Wall's evidence that he was not provided much detail about Ms. LaFleche's role, but appropriately assumed that she would return to work after her maternity leave.

[24] I also accept Mr. Wall's and Mrs. Riddle's evidence that Ford's marketing strategy continued to evolve while Ms. LaFleche was on maternity leave. Increasingly Ford focused on online marketing and phased out the more traditional campaigns, such as print and radio. Both Mr. Wall and Ms. Callahan worked on the new marketing strategy. The undisputed evidence is that Mr. Wall was happy with Ms. Callahan's work.

[25] Around January 2019, Ms. LaFleche had an issue with her medical coverage, related to her maternity leave. Around the same time she happened to stop in at Ford, and briefly met Mr. Wall for the first time. These two events in January prompted Ms. LaFleche to request a meeting with Mr. Wall and Mrs. Riddle. That meeting took place on February 8, 2019.

4. February 8, 2019 meeting

[26] On February 8, 2019, Ms. LaFleche met with Mr. Wall and Mrs. Riddle. They agreed that she would return to work on July 2, 2019. The parties disagree about what was said about Ms. LaFleche returning to her marketing manager position. I resolve this key dispute in the evidence below, in my analysis. However, there is no dispute that: Mr. Wall, Mrs. Riddle, and Ms. LaFleche discussed Ms. Callahan staying on; and that Mr. Wall told Ms. LaFleche that they would get back to her at the end of March to discuss her return to work position and duties.

5. Aftermath of February 8 meeting

[27] Ms. LaFleche wrote notes about the February 8, 2019 meeting in which she recorded her understanding that she was being demoted; and that she went home after this meeting, made a call to "labour services," and was referred to a "human rights" contact: Exhibit 23.

[28] On February 13, 2019, Ms. LaFleche filed a human rights complaint.

[29] On February 14, 2019, Ms. LaFleche texted MC, the marketing director with Ford's parent company, Canada Auto One: Exhibit 8. She asked MC for a letter of recommendation. MC replied: "Of course I would; you're not coming back after your mat leave?" Ms. LaFleche replied: "Well that's not really what happened, I met with Chris [Wall] and Cheryl [Riddle] last Friday. I just think it's a good thing to get at this time." MC responded: "Ok; well I have no issue providing you a recommendation." This text exchange indicates that Ms. LaFleche believed her position and job security at Ford were under threat as a direct result of the February 8 meeting.

[30] Ford did not contact Ms. Fleche by the end of March 2019, with more information about her return to work plan. Ms. LaFleche did not call Ford either to inquire about her return to work plan. Rather, Ms. LaFleche took Ford's lack of follow-up as confirmation that Ford was terminating her employment. By May 20, 2019, Ms. LaFleche made comments on Ford's Facebook page that she "got fired" from Ford while on maternity leave: Exhibit 9. Mrs. Riddle testified that she became aware of Ms. LaFleche's Facebook comments shortly after they were posted. Mrs. Riddle said the comments "shocked" Ford, and made Mrs. Riddle question whether Ms. LaFleche wanted to stay at Ford. Mr. Wall testified that he was also shocked to learn about Ms. LaFleche's Facebook post, but that Ms. LaFleche wasn't terminated from Ford as a consequence. He indicated that this type of conduct may warrant a written warning or other form of discipline by Ford, but not a termination. In any event, no one from Ford contacted Ms. LaFleche about her Facebook comments, or for any other reason.

[31] By June 3, 2019, Ford was served with Ms. LaFleche's human rights complaint. Ford responded to the complaint on July 2, 2019 – Ms. LaFleche's return to work date after her leave. However, I accept Ms. LaFleche's evidence that she did not receive this response to her complaint until August 7, 2019.

[32] Ms. LaFleche did not return to work on July 2, 2019. Instead, on July 4, 2019, she called Ford's parent company to talk to someone in human resources and was told no such person existed. She was referred to Mrs. Riddle or Mr. Wall. Ms. LaFleche called Mrs. Riddle the same day. Ford recorded the call, and the transcript of that call was admitted as evidence: Exhibit 11.

[33] In the call, Ms. LaFleche asked Mrs. Riddle whether Ford owed her any paperwork because: “clearly you aren’t giving me a job back, so I take it that you fired me officially.” Mrs. Riddle responded: “we haven’t fired you Mellissa. So we’ve responded to the Human Rights Complaint, and we are leaving it at that for now.” Again, I accept that Ms. LaFleche did not receive Ford’s response until August 7, 2019. Ms. LaFleche responded: “You never called me back at the end of March.” Mrs. Riddle responded: You never followed up with us either. And we never issued you an ROE, and you’re still on our benefits, and you still have your key, and you still have your code lock – or alarm code. So there was never talk about firing you so that’s all I’m going to say.” Ms. LaFleche then inquired about when she would get her ROE or “anything like that.” Mrs. Riddle replied: “Once the Human Rights complaint is finalized I guess.” Ms. LaFleche then stated: “it was not my responsibility to contact you guys, by the way, you’re the employer. So, I appreciate the absolute disconcert for anything that (inaudible) how it impacts my life at all ...” Mrs. Riddle ultimately replied: “I have no comment.”

[34] On July 4, 2019 Ms. LaFleche also filed a complaint against Ford with the Employment Standards Branch [ESB]. This ultimately led to Ford paying Ms. LaFleche a settlement amount of \$3750 for wages: Exhibit 17. The ESB settlement agreement is relevant to Ms. LaFleche’s remedies. I will return to the impact of the ESB settlement monies in the remedies section of this decision.

[35] Sometime in July, 2019 Ms. LaFleche learned she was pregnant again.

[36] By August 20, 2019, Ford considered that Ms. LaFleche had abandoned her employment because she did not return to work on July 2 as scheduled. On this date, Mr. Wall wrote a letter to Ms. LaFleche confirming that she was scheduled to return to work on July 2, 2019 following her maternity leave and did not. He stated that Ford had made clear to Ms. LaFleche on July 4, 2019 that her employment was not terminated. He also stated Ford had maintained her benefits, on the basis that she continued to be employed at Ford, during her maternity leave, on the expectation she was returning to work on July 2, 2019. However, Ford interpreted Ms. LaFleche’s failure to return to work as a signal of her intention that she no longer wished to be employed at Ford. As such, Ford was discontinuing her benefits coverage, effective September

16, 2019, and deemed Ms. LaFleche as no longer employed at Ford. The letter closes by requesting that Ms. LaFleche address any further communication to Ford's lawyer by mail.

[37] Ms. LaFleche never responded to Ford's August 20, 2019 letter, and never returned to work at Ford.

III ANALYSIS

[38] As noted above, there is no dispute that Ms. LaFleche has the protected characteristics of sex and family status. Pregnancy is a protected characteristic based on sex: *Brooks*. Maternity and parental leaves are also protected based on family status: *Knelsen v. Premium Pellet Ltd. and Wall*, 2004 BCHRT 55 at paras. 2 and 41. The issues I address are whether:

- A. Ford removed Ms. LaFleche from her marketing manager position;
- B. Ford's conduct adversely affected Ms. LaFleche, including whether it constructively dismissed her;
- C. Ms. LaFleche's sex and/or family status were factors in any adverse impact.

A. Did Ford remove Ms. LaFleche from her marketing manager position at the February 8, 2019 meeting?

[39] I find that Ford removed Ms. LaFleche from her marketing manager position at the February 8, 2019 meeting. The dispute in the evidence is about what Ford told Ms. LaFleche about her position on return to work. I set out the witness's evidence and then give reasons for my finding.

[40] Ms. LaFleche's evidence is that Mr. Wall told her that she was not returning to her marketing manager position because Mr. Wall felt that he and Ms. Callahan had found a good marketing strategy together, and he wanted to keep her in the marketing manager position. Mr. Wall said he didn't have another position to offer Ms. LaFleche and did not know what position she would return to. Ms. LaFleche says she defended her marketing manager work.

Mr. Wall told Ms. LaFleche that he would get back to her at the end of March 2019 to discuss what position she would be returning to.

[41] Mrs. Riddle's evidence is that Mr. Wall told Ms. LaFleche that Ford was keeping Ms. Callahan in the marketing department. When Ms. LaFleche returned, the marketing duties would be divided between Ms. LaFleche and Ms. Callahan, and the exact division of duties would be finalized upon Ms. LaFleche's return to work. Mr. Wall told Ms. LaFleche that Ford had expanded the marketing manager's duties. He did not tell her that her employment was terminated, that she would not be returning to the marketing manager position, or that Ms. Callahan would replace Ms. LaFleche as marketing manager. There was no discussion about changes to Ms. LaFleche's pay, title or who would be reporting to whom.

[42] Mr. Wall's evidence is that he understood the meeting to be a "meet and greet" with perhaps some initial discussion about Ms. LaFleche's return to work. As a result, he did not prepare for the meeting or have a finalized plan for Ms. LaFleche's return to work. Ms. LaFleche described some her previous work in the marketing manager position. Mr. Wall described some of the changes to Ford's marketing strategy including a focus on digital or online campaigns. He also advised Ms. LaFleche that Ms. Callahan would stay on in the marketing department and share marketing manager duties with Ms. LaFleche upon her return to work. Mr. Wall described Ms. LaFleche as defensive about her work, but also that the meeting ended on good terms. Mr. Wall told Ms. LaFleche that Ford would look at "3 scenarios" for Ms. LaFleche's return to work position and duties, and would get back to her by the end of March, 2019: Exhibits 10 and 31.

[43] I first set out the undisputed aspects of the February 8, 2019 meeting. First, there is no question that Mr. Wall wanted Ms. Callahan to continue with marketing manager duties after Ms. LaFleche returned to the office. He was upfront with Ms. LaFleche that he wanted Ms. Callahan to take on at least some of the marketing manager duties. Mr. Wall described, in a positive way, changes to the marketing strategy under Ms. Callahan, and Ms. LaFleche defended her marketing manager work. Ms. LaFleche's role on her return to work was undefined and Ford would get back to her by the end of March about her return to work position and duties. On these undisputed aspects of the meeting, it is clear that Ford indicated

to Ms. LaFleche that: it was happy with Ms. Callahan's performance as marketing manager; it wanted Ms. Callahan to remain in that role; Ms. LaFleche's duties would change, and Ford did not yet know how those duties would change.

[44] I accept Mrs. Riddle's evidence that Mr. Wall did not tell Ms. LaFleche that her employment was terminated, and that there was no discussion about changes to Ms. LaFleche's pay, title or who would be reporting to whom. I am satisfied, however, that Ms. LaFleche reasonably understood from the meeting that Mr. Wall wanted to keep Ms. Callahan in the marketing manager position, did not have another position to offer Ms. LaFleche, and did not know what position she would return to. I accept that there was discussion of division of duties upon Ms. LaFleche's return to work, but the clear inference from this discussion is that, at best, Ms. Callahan would retain marketing manager duties and Ms. LaFleche's role would significantly change. Further, given Mr. Wall's positive view of the changed marketing strategy, the discussion would reasonably have left the impression that Ms. Callahan would have a leadership role going forward.

[45] It is not necessary for me to determine whether Mr. Wall specifically told Ms. LaFleche that she would not be returning to the marketing manager position, as it was clear from the surrounding discussion that she would not be returning to the same duties she had in that role given that Ms. Callahan was staying on with marketing manager duties. Even if Mr. Wall told Ms. LaFleche that Ford had expanded the marketing manager duties, he did not communicate that Ms. LaFleche would return to an equivalent position. Rather, Ford communicated to Ms. LaFleche that it had not determined what role she would return to, with Mr. Wall telling her that Ford would look at "3 scenarios" for her return to work position and duties. If Ms. LaFleche were returning to her marketing manager position, there would not have been a need for Ford to look at "3 scenarios". The clear and reasonable inference is that Ford was not returning Ms. LaFleche to her original position of marketing manager.

[46] Further, I find it unlikely that Mr. Wall was considering making Ms. LaFleche and Ms. Callahan joint Marketing Managers. Ford has only ever had one Marketing Manager from the inception of the position in April 2017 to Ms. Callahan's tenure in the role from April 2018

onwards. It did not post a position when Ms. LaFleche did not return to work. The balance of probabilities points to Ford not having a position for Ms. LaFleche on her return to work because Ms. Callahan was continuing with management duties. As a result, it was necessary for Ford to look at alternative scenarios for Ms. LaFleche's return to work.

[47] Finally, Ms. LaFleche's version of the February 8, 2019 meeting is consistent with her actions shortly afterward. Her actions are consistent with an understanding that she was not returning to her marketing manager position, not simply that some of her duties would change. Before Ms. LaFleche's maternity leave, she had adjusted her marketing management duties to adapt to Ford's evolving needs and the vision and goals of the (then) new general manager SM. I take from this that Ms. LaFleche was prepared to adapt her marketing manager duties based on Ford's needs and direction of the general manager upon her return from maternity leave. What she was not prepared to do, was relinquish her marketing manager position to the person who filled her role while she was on maternity leave. That is what she reasonably understood had happened after her meeting with Mrs. Riddle and Mr. Wall.

B. Did Ford's conduct adversely affect Ms. LaFleche?

[48] For the following reasons, I find that Ford's acts and omissions adversely affected Ms. LaFleche in her employment and that it constructively dismissed her.

[49] First, Ms. LaFleche was removed from her marketing manager position. Changes to job duties may constitute an adverse impact. In *Brown v. PML and Wightman (No. 4)*, 2010 BCHRT 93 [*Brown*], the employer eliminated the complainant's management duties and unilaterally reassigned her to other work, constituting a demotion: at paras. 1075-1076. Above, I found that Ford removed Ms. LaFleche from her managerial position to an unknown position at Ford. I find that this was an adverse impact.

[50] Second, I accept that Ms. LaFleche felt humiliated on February 8, 2019 when she was told she was being removed from her marketing manager position. She grieved the loss of a position that she built from nothing over two years. I also accept that after the February 8, 2019 meeting she felt distressed and nervous about money. She lost sleep, her appetite, a sense of

security, and enjoyment of her maternity leave. These are adverse impacts that flow from the February 8, 2019 meeting.

[51] Third, I find that Ford constructively dismissed Ms. LaFleche. In *Brown*, the Tribunal said:

[1082] While a complainant need not necessarily establish a constructive dismissal in order to establish adverse treatment, the Tribunal has, as explained in *Vestad, supra*, at para. 52, applied the concept of constructive dismissal in appropriate cases:

... Constructive dismissal is a concept that has been imported into human rights from employment law. Where there is a "significant alteration" in a complainant's job duties and a complainant can establish a nexus between the change in duties and the prohibited ground of discrimination, a complainant will be found to have been constructively dismissed: [citations omitted].

[52] A constructive dismissal occurs where an employer has not formally terminated an employee's employment, but the employer's conduct is treated as a dismissal or termination at law: *Potter v. New Brunswick Legal Aid Services Commission*, 2015 SCC 10 at para. 30. It is uncontroversial that a termination of employment constitutes an adverse impact under the Code: *Sarba v. Ruskin Construction Ltd. and others*, 2022 BCHRT 35 at para. 36.

[53] In importing the concept of constructive dismissal into the human rights analysis, the Tribunal is not determining whether an employer has wrongfully dismissed the complainant, but is determining the nature of the adverse impact and its consequences. Here I have found that Ford unilaterally determined that Ms. LaFleche would not return in her role as the marketing manager. I also find that Ms. LaFleche reasonably understood that Ford was significantly altering her job duties, amounting to a dismissal from employment.

[54] I do not accept Ford's submission that Ms. LaFleche "abandoned" her job. Ford told Ms. LaFleche that someone would follow-up with her in March about her future work options at Ford. After having clearly indicated that Ms. Callahan was retaining managerial duties and that Ms. LaFleche would not be returning to the same position she held before her maternity leave, this was Ford's opportunity to address the specific changes to Ms. LaFleche's position and

duties at Ford. Had Ford contacted Ms. LaFleche in March 2019, and assured her that she would retain her managerial role at the same rate of pay, she may well still be working at Ford. Instead, no one from Ford ever contacted Ms. LaFleche after the February 8, 2019 meeting. This omission on Ford's part, together with its communications at the February 8, 2019 meeting means that Ms. LaFleche reasonably understood that not only was she removed from her marketing manager position, but that Ford wasn't that interested or committed to returning her to work since it had not identified her duties and position following maternity leave.

[55] No one at Ford did anything to dispel Ms. LaFleche's concern that she was dismissed from her marketing position at Ford because it preferred her maternity leave replacement. Between February 8, 2019 to July 2, 2019 (Ms. LaFleche's return to work date), Ford took no steps to return Ms. LaFleche to her pre-maternity leave status at Ford. Ford took no steps to address Ms. LaFleche's concerns about her precarious job status at all, despite assuring her that her concerns would be addressed in March 2019. All of this signals that Ford did not really want Ms. LaFleche to come back to work because it preferred her replacement, as in *Rassi v. Brighton College*, 2016 BCHRT 29 at para. 47.

[56] Ford points out that Ms. LaFleche did not reach out to Ford either after the February 8, 2019 meeting. I agree with Ford that Ms. LaFleche could have done so. Perhaps doing so could have led to a different outcome. I also appreciate that on July 4, 2019 Mrs. Riddle explicitly told Ms. LaFleche that she wasn't fired.

[57] However, none of this changes the fact that Ford said it would get back to Ms. LaFleche by the end of March with the possible return to work "scenarios" and did not. Ford had unilaterally decided to keep Ms. LaFleche's maternity leave replacement and left her in limbo about what position or duties it would have for her. Ford bore the responsibility to follow up to address with Ms. LaFleche the changes it was making during her maternity leave. Ford took no steps to do so. The July 4, 2019 conversation between Ms. LaFleche and Mrs. Riddle only occurred because Ms. LaFleche called Ford. The conversation also took place after Ms. LaFleche's return to work date. Further, Ms. LaFleche was not provided any further clarity about her marketing manager position or direction about returning to work in that call. Instead,

Mrs. Riddle said: “So we’ve responded to the Human Rights complaint and we’re leaving it at that for now ... there was never talk about firing you so that’s all I’m going to say.”

[58] It was not Ms. LaFleche’s responsibility to mitigate the position Ford unilaterally put her in: an atmosphere of humiliation from being removed from her marketing manager position; a reasonable perception that Ford did not really welcome back; and an uncertainty of what position if any she would return to at Ford: *Evans v. Teamsters Local Union No. 31*, 2008 SCC 20 (CanLII), [2008] 1 SCR 661 at para. 30, cited with approval in *Morgan-Hung v. Provincial Health Services and others (No. 4)*, 2009 BCHRT 371 [**Morgan-Hung**] at paras. 464-465.

[59] The adverse impacts that flowed to Ms. LaFleche, as a result of not being returned to her marketing manager position lay at Ford’s feet: *Morgan-Hung* at para. 463.

C. Was Ms. LaFleche’s maternity leave a factor in the adverse impacts she experienced?

[60] Ford submits that Ms. LaFleche’s maternity leave was not a factor in its decision to retain Ms. Callahan as the marketing director, and make changes to Ms. LaFleche’s position on her return from maternity leave: closing submissions, p. 13-16. Ford points out that employers are entitled to make legitimate business decisions and workplace changes while an employee is on a *Code* protected leave. Employers are not obligated to preserve a “frozen” workplace during such a leave: *Artuso v. CEFA Systems and others*, 2017 BCHRT 53 [**Artuso**] at para. 32. Ford says that it changed Mr. LaFleche’s position based on Ford’s marketing needs, and that this was a legitimate business decision.

[61] I agree that Ford was entitled to make legitimate business decisions while Ms. LaFleche was on leave. What Ford was not entitled to do however, was make changes that left Ms. LaFleche at a disadvantage, compared to other employees who were not on leave: *Artuso* at paras. 35-36. Were it otherwise, the *Code*’s protection against pregnancy-related discrimination would be rendered hollow: *Parry v. Vanwest College*, 2005 BCHRT 310 [**Parry**] at paras. 67-69. Ford made changes to the marketing department and Ms. LaFleche’s position more specifically because it preferred her maternity leave replacement. In essence, Ms. Callahan was retained in

a managerial role, and Ms. LaFleche was worse off than she was before her maternity leave. But for Ms. LaFleche's maternity leave, she would have continued as the marketing manager; a role that Ms. Callahan has continued in since Ms. LaFleche's *Code*-protected leave.

[62] Further, any legitimate workplace changes Ford made during Ms. LaFleche's maternity leave cannot encompass its lack of communication with Ms. LaFleche about her position upon returning to Ford. Ford did not have a valid business reason for not consulting Ms. LaFleche about significant changes made to her position and the marketing department in general during her maternity leave: "Being on maternity leave does not disentitle a person from being consulted about changes in the workplace, particularly those which may have a direct effect on [them]": *Brown* at paras. 1107-109. Ms. LaFleche was not consulted or kept in the loop about changes in the workplace, especially about the changes to her position, and the marketing department that she managed before going on maternity leave. But for her maternity leave, Ms. LaFleche would not have been excluded from such conversations and decisions. She would have been an active participant, especially since she acted in a managerial capacity.

[63] In *Bateman v. Prime Time Sports*, 2012 BCHRT 230, the Tribunal explained that discrimination may be established where an employer terminates the complainant's employment while on a *Code*-protected leave because it prefers their replacement. But for the leave, the employer would have no opportunity to prefer a replacement employee: paras. 70-80. While Mr. Wall had not worked with Ms. LaFleche, his successful working relationship with Ms. Callahan arose only because of Ms. LaFleche's maternity leave. The only conclusion can be that Ms. LaFleche's maternity leave was a factor in her removal from her role and in the constructive dismissal. Neither would have happened but for the *Code*-protected leave.

[64] Specifically, there is no dispute that Ms. LaFleche had been promoted to the role and that Ford was happy with her work, and had confidence in her ability to lead the marketing department in a newly created managerial role. She did so for approximately 18 months, until her maternity leave. It is clear from her evidence that she was prepared to adapt in the role to meet Ford's evolving marketing needs, and the vision of the general manager. It is also clear that Ms. LaFleche was eager to return to her role after her maternity leave but for: (1) being

told that Ms. Callahan would be staying on in the marketing manager role; (2) being removed from her marketing manager position to some unknown role; and (3) no further communication from Ford about her return to work position in March, 2019 or otherwise. In summary, Ms. LaFleche's pregnancy and subsequent maternity leave were factors in the adverse impacts she experienced at Ford.

[65] Ms. LaFleche has met all of the *Moore* criteria to prove discrimination. Ford's defence in this case was based on a denial that Ms. LaFleche's maternity leave was a factor in decisions it made about her marketing manager position. I have found otherwise. There is no basis for Ford to justify the facts I have found to constitute discrimination. As a result, I find that Ford discriminated against Ms. LaFleche, in her employment, on the basis of sex and family status, contrary to s. 13 of the *Code*.

IV REMEDIES

[66] I have found that Ford discriminated against Ms. LaFleche in her employment based on sex and family status, contrary to s. 13 of the *Code*. Therefore, Ms. LaFleche's complaint is justified. When the Tribunal determines that a complaint is justified, it must order the person that violated the *Code* to cease and refrain from committing the same or a similar violation: *Code*, s. 37(2)(a). Therefore, I order Ford to cease and refrain from committing the same or similar violation of the *Code*. The Tribunal may also make a declaratory order that the conduct complained of, or similar conduct, is discrimination contrary to the *Code*: s. 37(2)(b). I declare that Ford's failure to return Ms. LaFleche to her pre-maternity leave position is sex and family status discrimination contrary to s. 13 of the *Code*.

[67] Ms. LaFleche also requests: \$60,000 in compensation for injury to her dignity; and \$135,375 for lost wages and benefits, because of the discrimination. I will deal with each of these requests in turn. I first set out Ms. LaFleche's evidence about the impact of the discrimination on her.

[68] February 8, 2019 was the first instance that Ms. LaFleche perceived that she was being removed from her marketing manager position at Ford, and that her employment status at Ford may be in jeopardy. She gave evidence about the impact that the February 8 meeting and aftermath had on her:

I started the position with nothing, no contacts to radio stations even let alone a full out marketing plan ... I had to learn how to navigate, help create and establish two websites, I had to reroute two domains, with out knowing how to do it at all the first time ... I expected to have this career for at least 5 years ...

I'm nervous about money, I'm nervous about not having time to find child care ... Loss of sleep, appetite, stress on relationship. A whole grieving process happened. I wish I could just be enjoying maternity leave. Knowing my future is stable: Exhibit 23.

[69] At the hearing, Ms. LaFleche also described feeling humiliated at the February 8 meeting by not being returned to the marketing manager position. She described periods of: “crying all day;” intrusive thoughts about her work situation; a loss of productivity; feeling distressed; and a loss of a sense of security.

[70] From May to July 2019, Ms. LaFleche began applying for other job opportunities: Exhibit 25. She was not hired for any of those jobs. She described feeling “unwell” in July 2019 in part because of the impacts she experienced as a result of the February 8, 2019 meeting and aftermath. Ms. LaFleche’s discovery that she was pregnant in July 2019 also had an impact on her future planning. Ultimately, Ms. LaFleche decided to enroll in a program to become a doula on September 14, 2019. On November 9, 2020, Ms. LaFleche also registered a business for her planned doula practice: Exhibit 20. She expects to complete the doula program in March 2023.

[71] Ms. LaFleche says that Ford is responsible for her loss of employment with them, and the impacts that flowed to her as a result.

A. Injury to dignity

[72] As noted, Ms. LaFleche seeks \$60,000 in compensation for injury to her dignity. Ford says that the injury to dignity amount sought by Ms. LaFleche is disproportionate to any of

Ford's conduct, and in light of the other factors the Tribunal considers in making an injury to dignity award: closing submissions at p. 43-50.

[73] Under s. 37(2)(d)(iii) of the *Code*, the Tribunal has the discretion to award damages as a way to compensate a complainant for injury to their dignity. The purpose of these awards is compensatory, and not punitive. In making an injury to dignity award the Tribunal often considers several factors: the nature of the discrimination; the complainant's social context or vulnerability; and the specific effect the discrimination had on the complainant: *Nelson v. Goodberry Restaurant Group Ltd. dba Buono Osteria and others*, 2021 BCHRT 137 [**Nelson**] at para. 33. Determining the amount of an injury to dignity award depends on the specific facts and circumstances in any given case: *Gichuru v. Law Society of British Columbia (No. 2)*, 2011 BCHRT 185, upheld in 2014 BCCA 396 at para. 260. At the same time, the Tribunal often finds it helpful to consider the range of awards made in similar cases: *Campbell v. Vancouver Police Board (No. 4)*, 2019 BCHRT 275 at paras. 155-162. I begin with the nature of the discrimination in this case.

[74] The nature of the discrimination in this case is a dismissal from employment, specifically flowing from an employer refusing to return an employee to her pre-maternity position when another person was occupying that position and performing work in that position. In cases of a similar nature, the Tribunal has made injury to dignity awards ranging from \$5,000 - \$10,000: *Parry* (\$5000); *Coniston Products (No. 2)*, 2011 BCHRT 223 [**Coniston**] (\$6500); *Brown* (\$10,000). I note that the most recent of these cases is a 2011 decision and that the awards have been increasing over time: *Loiselle v. Windward Software Inc. (No. 3)*, 2021 BCHRT 80 at para. 21; *Araniva v. RSY Contracting and another (No. 3)*, 2019 BCHRT 97 at para. 145.

[75] In *Brown*, a 2010 decision, the Tribunal took into account derogatory and sexist comments "of the grossest kind" that Ms. Brown's employer made to her: paras. 1092 and 1207. That type of egregious conduct is not present in this case. This case is more like *Coniston*, decided 11 years ago, where an employer misapprehended their duties to an employee on maternity leave while making changes in the workplace.

[76] I note that in a 2015 decision, the Ontario Human Rights Tribunal identified the range of awards for injury to dignity where pregnancy was a factor to be generally \$10,000 to \$20,000: *Wratten v. 2347656 Ontario Inc.*, 2015 HRTO 1041 at para. 121. The Tribunal has identified the need to make awards that adequately compensate complaints, consistent with awards in other jurisdictions, including Ontario: *Radek v. Henderson Development (Canada) Ltd. (No. 3)*, 2005 BCHRT 302 at para. 646.

[77] Next, I consider the social context of the complaint, and Ms. LaFleche's vulnerability. Situating discrimination in social context assists in understanding the underlying causes of vulnerability, which are often outside a complainant's control: *Nelson* at para. 35. Considering social context also assists in understanding any persistent patterns of inequality at play. The Tribunal needs to be alive to such patterns, in light of the *Code's* purpose of identifying and eliminating "persistent patterns of inequality" associated with discrimination: *Code*, s. 3(d).

[78] The discrimination in this case occurred in the context of employment. It is well recognized that there is an inherent power imbalance between employers and employees: *Wallace v. United Grain Growers Ltd.*, [1997] 3 S.C.R. 701 [**Wallace**] at paras. 92-93; *British Columbia Human Rights Tribunal v. Schrenk*, 2017 SCC 62 [**Schrenk**] at paras. 66-67. Courts and the Tribunal also recognize that work is an essential aspect of a person's identity, self-worth, dignity and well-being: *Wallace* at para. 94; *Nelson* at para. 34. The discrimination in this case, also involved an involuntary change to Ms. LaFleche's employment and constructive dismissal. These dynamics heightened Ms. LaFleche's vulnerability: *Wallace* paras. 94-95; *Benton v. Richmond Plastics*, 2020 BCHRT 82 at para. 71.

[79] The Tribunal has also confirmed that pregnancy compounds vulnerability. A pregnancy often brings: new and potentially life-changing responsibilities; significant financial ramifications; and serious physical, psychological and emotional impacts: *Hanson v. U Lounge Hospitality (No. 2)*, 2011 BCHRT 181 at para. 177; *Kooner-Rilcof v. BNA Smart Payment Systems and another*, 2012 BCHRT 263 at para. 80; *McFarlane v. Brown (No. 3)*, 2013 BCHRT 119 at paras. 4-5. This is a gendered vulnerability that disproportionately impacts women: *Fraser v. Canada (Attorney General)*, 2020 SCC 28 at paras. 61 and 116. The *Code* aims to eliminate these

gendered inequalities so that everyone can fully and freely participate in the economic, social, political and cultural life of BC – whether they are pregnant or on a pregnancy-related leave.

[80] Therefore, the social context in this case is one of economic and gendered inequality. These are two persist patterns of inequality which compound a person’s vulnerability. That is what happened here. Ms. LaFleche was especially vulnerable as a pregnant employee who experienced an involuntary change to her employment status at Ford. Her vulnerability was also magnified by the fact that she had to take her leave from work earlier than expected for medical reasons: *Meldrum v. Astro Ventures*, 2013 BCHRT 144 at para. 158.

[81] Finally, I consider the impact that the discrimination had on Ms. LaFleche. I accept Ms. LaFleche’s evidence on this point. I accept that she felt humiliated at the February 8, 2019 meeting. At a time when she was vulnerable, and seeking to establish a connection with the new general manager, her employer told that she was not returning to her managerial role – a role she “built from scratch” after being promoted to it. Instead, she was told that the new manager was working well with the employee who filled in during her leave, and Ms. LaFleche’s role and duties at Ford were up in the air.

[82] Ms. LaFleche was left in limbo while Ford told her they would come up with some options for her role and duties by the end of March 2019. No one reached out to her. I accept that Ms. LaFleche was in distress during this time. Instead of enjoying her maternity leave, and time with her child, she became preoccupied about her work status and her financial stability. I accept that she experienced a loss of sleep, appetite, sense of security, and productivity. She experienced strain in her relationships.

[83] In all the circumstances, I find that an award of \$12,000 for injury to dignity is appropriate in this case.

B. Lost wages and benefits

[84] Section 37(2)(d)(ii) of the *Code* gives the Tribunal discretion to compensate a person for all, or a part, of any wages or salary lost, or expenses incurred because of discrimination. This is

a remedy intended to further the *Code's* purposes, which include providing a means of redress for people who have been discriminated against, as well as fostering a society where such discrimination does not occur: s. 3; *Martin v. Grapevine Optical and another (No. 2)*, 2022 BCHRT 76 [**Martin**] at para. 65. The purpose of wage loss compensation is to restore a complainant, to the extent possible, to the position they would have been in had the discrimination not occurred: *Gichuru v. the Law Society of British Columbia (No. 9)*, 2011 BCHRT 185 [**Gichuru (No. 9)**] at para. 300-303, upheld in 2014 BCCA 396.

[85] Ford says that Ms. LaFleche did not lose any wages due to Ford's conduct. Rather, Ford says that Ms. LaFleche chose not to follow-up with Ford after February 8, 2019 and did not return to work as scheduled after her maternity leave. In any event, Ford says that Ms. LaFleche did not mitigate her wage loss because she did not apply for many other jobs, and none in her field. Ford also says that Ms. LaFleche was already compensated for wage loss due to their ESB settlement agreement. Allowing for further recovery for wage loss at this Tribunal would amount to "double recovery": closing submissions at p. 35.

[86] In terms of maternity or parental benefits, Ford says that Ms. LaFleche obtained the maternity benefits she was entitled to while working at Ford. Any subsequent pregnancy for which Ms. LaFleche seeks maternity and parental benefits has no connection to any conduct by Ford: closing submissions at p. 35.

[87] As a starting point, I consider whether there is a causal connection between the discrimination and the wage / benefits loss that Ms. LaFleche seeks. If so, I have the discretion to award full or partial wage loss compensation, taking into account the remedial purposes of the *Code*: *Martin* at para. 66; *Gichuru (No. 9)* at para. 303. I also consider whether Ms. LaFleche took steps to find other work to reduce her losses. This is called "mitigation." The Tribunal may reduce a wage loss award where a complainant failed to take reasonable steps to reduce their loss: *Gichuru (No. 9)* at para. 370. The Tribunal may also reduce a wage loss award to account for any uncertainty around the losses: *Coniston* at para. 62.

[88] Ms. LaFleche requests compensation for lost wages and benefits as follows:

- (1) 7.5 months of wage loss from July 2019 until mid-February 2020 in the amount of \$40,625. July 2019 reflects Ms. LaFleche's return to work date after her maternity leave. Since Ms. LaFleche was pregnant again in July 2019, she estimated returning to work for 7.5 months before taking a second maternity leave and parental leave around mid-February, 2020.
- (2) 15 weeks of lost maternity leave benefits from mid-February 2020 to May 31, 2020 in the amount of \$8,925, and based on Service Canada's maternity leave benefits calculator: Exhibit 22.
- (3) 35 weeks of lost parental leave benefits from June 1, 2020 to January 31, 2021 in the amount of \$20,825, based on Service Canada's parental leave benefits calculator: Exhibit 22. Ms. LaFleche says that she would have been eligible for maternity leave and parental leave benefits if she returned to work at Ford.
- (4) A year of lost salary from February 1, 2021 to January 31, 2022 in the amount of \$65,000. Ms. LaFleche says, but for the discrimination, she would have returned to work at Ford after her second maternity leave and parental leave.

[89] I find there is a causal connection between the discrimination and losses claimed. I have no reason to doubt that but for the discrimination, Ms. LaFleche would have continued to work as the marketing manager at Ford. For the reasons set out above, I reject Ford's argument that the losses flow from Ms. LaFleche simply choosing not to return to work as scheduled after her maternity leave.

[90] The issue then is whether there is any basis upon which to reduce the order for lost wages and benefits. Ford says that: (1) there was no guarantee that Ms. LaFleche would have continued at Ford up until January 31, 2022; (2) Ms. LaFleche did not reasonably mitigate her wage loss; and (3) the settlement monies that Ford paid to Ms. LaFleche in the ESB process must be deducted from any wage loss: Closing submissions at pp. 33-42. I will deal with each of these arguments in turn.

[91] First, I address Ford's argument that there was no guarantee that Ms. La Fleche would have continued at Ford until January 31, 2022. I find no reason to reduce the award based on uncertainty from the 7.5 month time period between July, 2019 to February 15, 2020. Ms.

LaFleche gave evidence that she learned she was pregnant again in July 2019. I accept her estimate that she would have worked from July 2019 to February 15, 2020, after which she would have taken another 15-week maternity leave from mid-February 2020 to May 31, 2020; and a 35-week parental leave from June 1, 2020 to January 31, 2021.

[92] Ms. LaFleche was promoted to the position she was in before her leave. Ford had no concerns about her performance. While Ford had some concerns about Ms. LaFleche's Facebook post in May 2019, Ford's own evidence was that this type of conduct would not have led to a termination of employment. There was also no evidence that Ms. LaFleche was unhappy in her position prior to her maternity leave. Rather, the evidence indicates that Ms. LaFleche was proud of her work in the position, prepared to adapt the role to Ford's evolving needs, and planned to stay in the role for several more years.

[93] Further, Ms. Callahan has continued in the marketing manager position since Ms. LaFleche's maternity leave up until the date of the hearing. This indicates that Ford did not have a reason to eliminate Ms. LaFleche's position or lay her off for financial reasons. Accordingly, I see no uncertainty that Ms. LaFleche would have worked for 7.5 months from July 2019 to the start of her second maternity leave around mid-February, 2020.

[94] Ms. LaFleche relied on a maternity and parental leave benefits calculator through Service Canada to prove her entitlement to maternity and parental leave benefits: Exhibit 22. Ms. LaFleche says that Ford is responsible for her lost maternity/parental benefits because but for the discrimination she would have accumulated the necessary 600 eligible work hours at Ford between July 2, 2019 to February 15, 2020 to become eligible for these benefits from Service Canada. There are 32.5 weeks between July 2, 2019 to February 15, 2020. Had Ms. LaFleche worked full-time hours during this time period, she would have easily accumulated the 600 work hours for maternity and parental leave benefits. Accordingly, I do not find any uncertainty in relation to the lost benefits.

[95] I have a different view about the time following Ms. LaFleche's estimated return from her second maternity leave on February 1, 2021. There is some uncertainty about whether Ms.

LaFleche would have returned to Ford at this time. Ms. LaFleche gave evidence that she expected to have this career for at least 5 years. I accept Ms. LaFleche's evidence that this is what she expected. At the same time, an expectation is not a certainty. Further, Ms. LaFleche's evidence makes clear that she did not expect her career at Ford to be longer-term. Her decision to pursue a career as a doula instead of seeking further training in her own field supports this view. Accordingly, it is my view that there is some significant uncertainty regarding this period of wage loss.

[96] I turn next to Ford's argument that Ms. LaFleche did not reasonably mitigate her losses. The onus is on Ford to prove a failure to mitigate: *Vanton v. British Columbia (Council of Human Rights)*, 1994 CanLII 18438 (BC SC) at para. 78. It is helpful here to look at Ms. LaFleche's mitigation efforts following the dismissal separately from her efforts after January 31, 2021.

[97] This situation is unlike *Brown* where the Tribunal found that the complainant entered into the design business immediately upon leaving employment at far lower earnings, and chose not to continue to seek other employment which would more closely approximate her earnings: paras. 1153-1154. This situation is also unlike *Coniston* where the complainant began full-time studies eight months after her maternity leave ended, and the Tribunal declined to order wage loss while she attended school: paras. 64 and 78.

[98] I accept that Ms. LaFleche was initially hampered in her ability to mitigate her damages, because of the impacts she experienced as a result of the discrimination. I accept her evidence that her confidence was shaken such that it made it difficult to find a new position. She did apply to a few jobs from March to July 2019, but cried during interviews and then determined that she was not in any condition to apply for jobs at that time. Ms. LaFleche had lost her job due to a maternity/parental leave and was pregnant again by July 2019. I accept that, in these circumstances and given the impact of the discrimination on her, it was reasonable to look at and opt for a retraining option. Ms. LaFleche began the doula training program on September 14, 2019.

[99] While Ford says that Ms. LaFleche did not look for many jobs and did not look for jobs in her field, it did not provide evidence of the availability of comparable jobs in the field at that time. In all of the circumstances, I am not persuaded that Ms. LaFleche did not reasonably mitigate her losses in the period following the dismissal. As I found above, there is no uncertainty about the losses in this period. For these reasons, I find that Ms. LaFleche is entitled to compensation for: 7.5 months of lost wages from July 2019 until mid-February 2020 in the amount of \$40,625; and maternity and parental benefits from mid-February 2020 to January 31, 2021 in the amount of \$29,750. The total amount of wage and benefit loss during this time period is \$70,375.

[100] I return then to the period from February 1, 2021 to January 31, 2022. I reach a different conclusion about wage loss in this period. Since the fall of 2019, Ms. LaFleche has been enrolled in a doula program. She registered a business for her planned doula practice in November 2019. She expects to complete the doula program in March 2023. By February 1, 2021, Ms. LaFleche had switched career paths. Her choice to retrain has meant that she was unavailable for work. There was no evidence that she applied for other work during this time because she was focussed on the doula program. I find that this period of time is more similar to the situation in *Coniston* where the Tribunal declined to order wage loss while she attended full-time school.

[101] Specifically, I found above that, in the circumstances following the dismissal, it was reasonable for Ms. LaFleche to consider and take up retraining and she did not fail to mitigate her losses by doing so. However, Ms. LaFleche's decision to become a doula turned into a full career change, the financial consequences of which cannot lay fully at Ford's feet: for example, see *Gichuru (No. 9)* at para. 327. Combined with the uncertainty about how long Ms. LaFleche would have wanted to pursue her career at Ford, I do not find that the remedial purposes of the *Code* warrant compensation for wage loss after January 31, 2021. Therefore, I decline to exercise my discretion to award Ms. LaFleche wage loss from February 1, 2021 to January 31, 2022.

[102] Finally, I agree with Ford that the additional wages it paid to Ms. LaFleche as part of the ESB settlement agreement should be subtracted from the wage loss award. Ford paid Ms.

LaFleche additional wages in the amount of \$3,750, less statutory deductions. To avoid double recovery the \$3750 in additional wages must be deducted from Ms. LaFleche's wage loss award: *Gatica and Migrante obo Temporary Foreign Workers from Guatemala v. Golden Eagle Blueberry Farm*, 2020 BCHRT 214 at para. 60; *Banfield v. Strata Geodata Services Ltd.*, 2021 BCHRT 142 at para. 184.

[103] Therefore, Ms. LaFleche is entitled to \$70,375 less \$3,750, for a total wage loss and benefits award of **\$66,625**.

[104] To address any tax consequences for Ms. LaFleche of receiving compensation for wage/benefit loss in a single tax year, I also order Ford to compensate Ms. LaFleche for any additional income tax liability she may incur (common called a "tax gross up"): *Martin* at para. 77. Ms. LaFleche must advise Ford of any additional tax liability, and supply any supporting tax documentation.

V ORDERS

[105] For all the reasons given in this decision:

- a. I order Ford to cease and refrain from committing the same or a similar contravention of the *Code*: s. 37(2)(a) of the *Code*.
- b. I declare that Ford's conduct contravened s. 13 of the *Code*: s. 37(2)(b).
- c. I order Ford to pay Ms. LaFleche \$12,000 as compensation for injury to her dignity, feelings, and self-respect: s. 37(2)(d)(iii).
- d. I order Ford to pay Ms. LaFleche \$66,625 in lost wages and benefits, and to remit the employer's contributions of statutory deductions required: s. 37(2)(d)(ii).
- e. I order Ford to pay Ms. LaFleche an amount, to be verified by Ms. LaFleche based on her tax records, to compensate her for any tax consequences of receiving a lump sum payment of wages: *Code*, s. 37(2)(d)(ii).

- f. Ms. LaFleche is entitled to pre and post judgement interest based on the rates set out in the *Court Order Interest Act*, RSBC 1996, c. 79.

Amber Prince
Tribunal Member
Human Rights Tribunal