

IN THE MATTER OF a Complaint
Pursuant to section 11 of the *Human
Rights Act, 2010* SNL 2010, c. H-13.1

BETWEEN:

S.R.

COMPLAINANT

AND:

A Pastoral Charge in the Province of
Newfoundland and Labrador

RESPONDENT

AND:

Newfoundland and Labrador Human
Rights Commission

COMMISSION

Gladys H. Dunne (Adjudicator)

Hearing Dates: November 22, 23 and 24, 2017

Decision: November 30, 2018

Appearances:

On Behalf of the Complainant:

S.R.

On Behalf of the Respondent:

Melissa Royle

On Behalf of the Commission:

Donna Strong

DECISION ON REMEDY

1. In my decision of February 28, 2017, I held that a pastoral charge in the Province of Newfoundland and Labrador (the "Respondent") had discriminated against S.R. (the "Complainant") on the basis of sexual orientation. This is the decision on remedy.
2. S.R. seeks compensation for injury to dignity, feelings, and self-respect; loss of wages and benefits; expenses incurred by S.R. and interest. He further sought

public interest remedies to stop the Respondent from committing the same or similar contraventions in the future.

3. The Respondent claims that lost wages are not typically awarded as a remedy for a finding of discrimination in the provision of denial of services. In the alternative, they claim that lost wages is purely speculative. They claim that there is a high likelihood that S.R. would not have completed the journey towards becoming an ordained minister and therefore any claim for lost wages is inappropriate. The Respondent further claims that S.R. failed to adequately mitigate his damages, which must be considered in the disposition of his claim for lost wages. The Respondent agrees with general damages being an appropriate form of remedy in this case, reimbursement of reasonable expenses incurred by S.R. as a result of the discrimination, and public interest remedies as deemed appropriate under the circumstances.

EVIDENCE

S.R.

4. S.R. testified that in October, 2009 when he became an inquirer within the United Church of Canada, he had started online courses with the Atlantic School of Theology to obtain his Masters of Divinity, while waiting for his discernment. He had been doing extremely well with the courses, achieving top grades.
5. After he was removed from his leadership roles at the pastoral charge in December, 2009, S.R. testified that he became very depressed. He remained in Twillingate, Newfoundland and Labrador and stayed inside his parents' home completely disabled. He could not attend school, nor be employed in the workforce.
6. By September, 2010 S.R. testified that his mental health had declined and he knew he had to remove himself from the Community of Twillingate. He moved to Halifax, Nova Scotia to become a lay student with the Atlantic School of Theology at St. Mary's University. Due to becoming more depressed, S.R. only completed two semesters and had to withdraw from five out of six courses by April, 2011.
7. S.R. testified that he applied for the RESO program, Canadian Forces Chaplain Branch and was accepted; however, his medical was rejected because of the anti-depressant medication he was taking for his depression, and this prevented his enrollment into the RESO-Chaplain Program.
8. In 2010 and in 2011, S.R. had no income. He testifies that he could not work due to his poor mental health. He further testified that he started a lay ministry position

with Topsail United Church. He remained working with Topsail United until the spring of 2016, when he had to resign.

9. S.R. testified that in addition to his employment with Topsail United, he worked as a residence coordinator at Memorial University from August, 2013 to September, 2015. He was also hired in May, 2015 as coordinator outreach activities with Memorial University. S.R. testified that he had to resign in September, 2015 as residence coordinator because it was too much for him, with the upcoming Human Rights Hearing in September, 2015, in relation to his complaint against the Respondent. Between 2014 – 2015, S.C. had to take six months unpaid leave of absence from both Topsail United and Memorial University to prepare, both mentally, emotionally and administratively for his Human Rights Hearing. From November 2015 to the spring of 2016, S.R.'s only source of income was from Topsail United Church.
10. S.R. testified that in March/April of 2016, he had to resign from Topsail United because his psychological state declined right back to what it was in 2009, when the Respondent removed him from his leadership roles. He testified that after the Human Rights Hearing was held in the fall of 2015, he had flashbacks full of anxiety and rage. The Hearing had reopened all of these negative and upsetting emotions. S.R. was once again feeling enraged because his resignation from Topsail United was another lost opportunity for him.
11. S.R. moved back to Twillingate, NL and filed for employment insurance benefits. He started treatment with his family physician, Dr. Mohamed Ravalia and counselling with Social Worker, Theresa King at Notre Dame Bay Memorial Health Centre in Twillingate, NL.
12. S.R. testified that in February, 2017 he applied for and received self-employment assistance from the Advanced Education, Skills and Labour, Employment and Training Division of NL to start up a small tourism venture in Twillingate. He testified that as long as he stayed in the house, he was fine. However, once he went outside of the house and went into town, he filled with rage. Rage consumed him because he still had received no apologies from the Respondent, and nobody was reaching out to him. His mother, who he resided with, received no pastoral care and he said that he and his family were ostracized.
13. S.R. testified that his tourism venture was unsuccessful. He would tell customers that he was booked and unavailable to meet with them, to avoid having to go into town. His contract with Advanced Education, Skills and Labour expired in September, 2017; however, he had to leave Twillingate in August, 2017 to commence fulltime employment with CONA in Happy Valley, Goose Bay, NL.

14. Since August 20, 2017 S.R. has been employed as a student development officer with residence life at CONA. S.R. testified that initially he had reservations in accepting the position because of the remoteness and isolation of the community. He has a very stressful job, being responsible to oversee all of the aspects of the students' lives, who live in residence on campus.
15. S.R. testified that in his new employment, he has students relaying to him very traumatic events in their lives. Claims of racism exist and he faces conflict and strife on a regular basis. In his role as student development officer, he is supposed to be "the beacon of light" as described by S.R. He feels like he is disappointing the students, because he is "not 100% mentally there for them". Many times hearing their events and trying to support them, results in a triggering of memories to S.R. of the trauma he has experienced, as a result of being removed from his leadership roles in the pastoral charge due to his sexual orientation.
16. S.R. testified that he is on call 24 hours/7 days a week. He has to respond to suicide calls and go and intervene with overdoses. S.R. struggles with questioning how he can help others, if he cannot keep his own life together. S. R. also has to train the staff members with leadership development. He is supposed to be the "smiling face" in the room; however, he is struggling and he has called the support line for himself on many occasions. This brings feelings of guilt, helplessness and incompetency to S.R.
17. S.R. testified that he now has a low tolerance for criticism. His rage is intense and it comes over him very quickly. S.R. explained that he is always on guard/on edge for fear of being attacked on the basis of his sexual orientation. S.R. emotionally stated that he doesn't "feel alive" and he is "just existing".
18. Every incident of alleged racism, conflict and trauma that S.R. witnesses in his employment reminds him of what he has gone through in his personal life since December, 2009. He is living in an isolated community, where he has very little support from knowing very few people.
19. S.R. continues to use medical marijuana on a daily basis to help him cope and to treat his diagnosis of post-traumatic stress disorder, the cost is an out-of-pocket expense to him. Despite the cannabis treatment, S.R. testified that he is always re-living the experience of what happened to him. He still suffers from extreme anxiety and rage and S.R. states that it wipes him out for the rest of the day. He is uncertain as to how long he will be able to maintain his current employment position.

Dr. Mohamed Ravalia

20. Dr. Ravalia has practiced medicine in Twillingate, NL for over 33 years. S.R. has been his patient since S.R. was a young child. Dr. Ravalia can recall the effect on S.R. of having his leadership roles removed from him by the Respondent.
21. Dr. Ravalia testified that the impact on S.R. was severe. He recommended that S.R. move away from the community and continue with psychological and medical support systems. Anti-depressants were prescribed and anxiety medication.
22. In the fall of 2016, Dr. Ravalia diagnosed S.R. with post-traumatic stress disorder. Dr. Ravalia testified that S.R.'s symptoms consisted of:
 - Disturbed mood
 - Disruptions in eating
 - Poor sleeping patterns
 - Panic and anxiety
 - Depression
 - Extreme emotions and tearfulness
 - Periods of sweating
 - Feeling out of touch with reality
 - Becoming withdrawn and not wanting to leave the house
23. With the PTSD syndrome, Dr. Ravalia began counselling with S.R. He also referred him to a mental health social worker for counselling, Ms. Theresa King. Dr. Ravalia testified that he was "very, very concerned about S.R.'s mental health". He knew S.R.'s character very well and he was witnessing him turn into a "withdrawn anxious man that progressed to someone who felt totally disconnected". He witnessed a real disruption to the social aspect of S.R.'s life, describing him as having "a panic disorder, distinct anger and flashbacks".
24. Dr. Ravalia prescribed sedatives and anti-depressants to S.R. but with little success. He then prescribed medical marijuana as the research showed good results with this option.
25. Dr. Ravalia testified that this entire sequence of events, stemming from S.R. being removed from his leadership roles on the basis of his sexual orientation, has affected S.R.'s ability "to grow as a human being; his psychological and emotional growth". Dr. Ravalia stated that S.R. now suffers from a "significant mental health disorder".

26. The physical symptoms that Dr. Ravalia witnessed S.R. experience consisted of:
- His heart would start racing
 - He became sweaty and clammy
 - Acute/chronic features
 - Symptoms of having a heart attack
27. Dr. Ravalia testified that this entire ordeal has been a post-traumatic event for S.R. He stated that it has had a “huge negative impact on his life and it still consumes him”. S.R. has experienced alienation in his opinion. He described what S.R. was experiencing as “isolation, fear, alienation and confusion”. He further testified that he has witnessed a “transformation to the negative” in S.R. “He went from vibrant to fearful and disturbed”.
28. In Dr. Ravalia’s opinion, the removal of his church duties triggered the PTSD in S.R. He was alienated from a large organization that is highly respected and highly regarded in society. The way S.R. was treated by the Respondent, once his sexual orientation was known, triggered the PTSD. Dr. Ravalia stated “this was the nucleus of the trauma”.
29. Dr. Ravalia confirmed that prior to December, 2009, S.R. had no previous mental health issues. He further testified that he has referred S.R. to see a psychiatrist, and states “this is a lifelong vulnerability for S.R.” Dr. Ravalia recommended a lot of counselling and access to medications. He states that on-going counselling is significant. “A lot of healing still has to happen and close follow-up is necessary”.
30. Dr. Ravalia testified that medical marijuana is very costly and S.R. requires it long term for treatment. He further testified that lifelong intensive counselling is a very important element to the emotional and psychological health of S.R.
31. Dr. Ravalia testified that “a considerable amount of education is needed in the community of Twillingate”. Possible measures to take, in his view, were reconciliation, the ability to talk and the ability to recognize that one has made an error. To help S.R. heal, Dr. Ravalia believes that there needs to be a public apology, and counselling for S.R., and for the entire organization within the church. Dr. Ravalia testified that S.R. will continue to suffer long term and he will “bear this weight for the rest of his life” He testified that there will be less triggering events for S.R. if reconciliation, reintegration and restitution were to take place.

Theresa King

32. Ms. King has been working as a social worker in Twillingate, NL for over 31 years at the Notre Dame Bay Memorial Health Centre. She testified that Dr. Ravalia referred S.R. to counselling and she received his preliminary report from the Mental Health Triage on April 6, 2017. The report stated that S.R. was suffering from anxiety since 2009, because of an event that took place at his grandfather's funeral.
33. Ms. King testified that she counselled S.R. from April 18, 2017 to August 24, 2017. Weekly sessions began in May, 2017 and then bi-weekly sessions in July, 2017. S.R. was moving to Goose Bay at the end of August, 2017 and she made him aware of support services in that area.
34. Ms. King testified that S.R.'s symptoms were all indicative of anxiety. She described "mood fluctuations, sleep interruptions, intense rage and always in fight mode". She explained that returning to Twillingate triggered many emotions for S.R. The fact that the Respondent had not apologized to him, nor acknowledged a wrong-doing, had a big impact on S.R.
35. Ms. King further testified that not having the support from his church, greatly impacted S.R. She stated that "the church is the center of the foundation in a small community". She further testified that "stigmas develop resulting in alienation". She stated that S.R. felt isolated and his support system was very minimal.
36. Ms. King's counselling with S.R. was all centered around his treatment by the Respondent and not having the support from his church. She testified that he had great difficulty staying focused and introducing a daily routine because of his anxiety. She was aware that he could not give 100% to his new tourism venture because of his daily struggles.
37. Ms. King testified that she never saw much progress in S.R. from April, 2017 to August, 2017. Her counselling services were only short term relief and she believes that S.R. requires long term counselling.

Reverend B.C.

38. Rev. B.C. served as the clergy at the pastoral charge from 1995 to 2010. He testified that he believes the Respondent should be doing "everything to fix the brokenness" and that "the congregation should have worked harder to bridge the brokenness". He further testified that one cannot move forward, until that brokenness is "healed and fixed".

39. Rev. B.C. believes that the congregation should be “made truly aware of what truly happened”. He further testified that he is not aware of any new Mission Statement drafted by the pastoral charge since his departure as clergy from Twillingate in 2010.

Reverend G.S.

40. Rev. G.S. is the clergy in Twillingate and he has been in this position since July, 2012. He testified that he had not been informed by the pastoral charge of this complaint by S.R. until 3 years after his arrival in Twillingate, when the Human Rights Hearing took place in the fall of 2015. He was then only provided with a brief overview of the nature of the complaint.
41. Rev. G.S. testified that as the pastor, he has chosen not to address this human rights matter with the congregation until it is fully resolved, despite my decision on February 28th, 2017, finding that the Respondent discriminated against S.R. on the basis of sexual orientation. He further testified that despite his pastoral care duties, he did not reach out to S.R. knowing the difficulties he was experiencing. His reasons for not doing so were because he had not met S.R. and did not know him and S.R. never reached out to him. Because S.R. made no effort to contact him, Rev. G.S. did not reach out to S.R.
42. S.R.’s grandmother passed away in the winter of 2017 and he was not asked to participate at her funeral. Rev. G.S. testified that he did not contact S.R. to involve him in the funeral service.
43. Rev. G.S. testified that he is uncertain of the necessary steps to now bring healing. He recognizes that some of the congregation would like to see this matter settled and have expressed to him the need for closure. Rev. G.S. testified that he would like to see S.R. return to the church, and he believes the congregation would welcome him back. Rev. G.S. testified that in the event S.R. returned to participate in the church, he believed it would be best to have his predecessor present, Rev. B.C., and not him.
44. Rev. G.S. testified that the church now has a new Mission Statement and to his recollection it was adopted in 2014. He testified that the reason for changing their Mission Statement was because it was old and needed to be modernized. He testified that some of the provisions in the previous Mission Statement were no longer necessary and were therefore deleted.

J.T.

45. J.T. is a member of Session and he has been a member of the congregation of the pastoral charge for approximately 15-20 years. He testified that in March, 2015 the Minutes of a meeting of Session reflected that a new Mission Statement was being considered and would “be dealt with maybe early fall or sooner if necessary”.
46. J.T. further testified that in June, 2016 the Minutes of a meeting of Session reflected that the proposed Mission Statement and the revised Vision Statement were revised in January, 2016, and “it was agreed to have a copy for the congregation through the church bulletin and a copy included in the Session Minutes”. J. T. testified that he had no recollection of the discussions around why the Mission Statement had to be revised and he could not recall a sense of urgency, but rather a sense of necessity to revise it. He could not recall when the new Mission Statement was distributed amongst the congregation.
47. J.T. testified that the Respondent made multiple attempts to resolve this matter with S.R.; in particular, two offers of mediation. Both offers were turned down by S.R. and J.T. testified that he is unaware of any attempts made by S.R to reach out to the Respondent. J.T. testified that there was no communication between the church and S.R., after the two requests for mediation were made in June, 2010 and July, 2010.

F.M.M.

48. F.M.M. is Executive Secretary of the NL Conference of the United Church. She testified on the policies and procedures for entering the ministry of the United Church and she provided an overview of a typical journey, commencing with the inquirer and discernment stages, to the candidacy and educational component, ending with the final stages of ordination.
49. F.M.M. testified that had S.R. not been removed from his leadership duties, his journey to being ordained would have followed this typical path:
 - October, 2009 – start of discernment
 - October, 2010 – end of discernment
 - November 2010 – April, 2011 – interviews and reviews to determine his candidacy
 - Spring 2011 – candidacy approved
 - September, 2011 – April, 2012 – 1st year of schooling
 - September, 2012 to April, 2013 – 2nd year of schooling
 - September, 2013 – April, 2014 – year of internship
 - September, 2014 – April, 2015 – 3rd year of schooling

- Spring 2015 – ordination
50. F.M.M. testified on the salaries S.R. would have earned once ordained. The compensation comprised of salary and the use of a manse/housing allowance. Her testimony was as follows:
- July, 2015 – December, 2015 - \$17,304.50 plus provided with a manse (free housing)
 - January, 2016 – December, 2016 - \$35,301 plus a manse
 - January, 2017 – December, 2017 - \$37,296.00 plus a manse
51. F.M.M. testified that as an inquirer you are not paid a salary, unless you take a job with one of the churches. She further testified that you are not paid during your internship year. She testified that as of 2012 Pine Hill Funding, through Pine Hill Divinity Hall, who provides financial assistance to the United Church of Canada students preparing for ministry, no longer paid a living allowance or book allowance; they only provide assistance with tuition fees.
52. F.M.M. further testified that splitting up your internship over two summers, working with the chaplain program, is not the norm and would only be permitted if approved by the Education and Students Committee. She was unaware of anyone who proceeded with this route on their pathway to being ordained.
53. F.M.M. testified about the options presented to S.R. to help him proceed with his discernment process and to reintegrate him into the church. After the West District decision in June, 2010, F.M.M. testified that S.R. could have returned then to his discernment process at the pastoral charge. She agreed that this offer would have been very difficult for S.R. to accept; to expect him to return to the same environment after everything that had transpired between him and the Respondent. In March 2012, a further three options were given to S.R. as follows:
- (i) Continue on in a different pastoral charge in the West District, with another discernment committee; however the two district representatives would remain on the committee, with 3-5 new members; or,
 - (ii) Transfer his membership from Twillingate to a new congregation and start the discernment process all over from the beginning; or,
 - (iii) West District could ask the East District to allow S.R.'s discernment to proceed in their district.
54. F.M.M. testified that S.R. chose option # 3 and training was scheduled to begin in June, 2013 for the East District. F.M.M. testified that the process never began

because S.R. advised them that he would not be continuing his discernment process with the United Church.

55. F.M.M. further testified that she sensed a “willingness to try” from the Church. She believes that the Church wanted to help S.R. reintegrate and proceed with his discernment. She testified that the first 2 options presented to S.R. in 2012 would have been easy alternatives for him to accept. F.M.M. was not aware of any offers of mediation, nor offers of settlement made by either S.R. or the Respondent.
56. Recommendations were made by F.M.M. on how to remedy the damages in this matter. She suggested a talking circle/listening circle for S.R. and the Respondent to participate in, so that all parties could move forward in a healthy manner. F.M.M. recommended a mandatory workshop for the pastoral charge on the topic of a healthy workplace and to understand policies of harassment and discrimination. She further recommended counselling sessions for all involved.

THE LAW

57. The remedial powers of the Human Rights Act, 2010 (“the Act”) are set out in Section 39 of the Act:

“39. (1) A board of inquiry

(a) shall, where it finds that a complaint is not justified, order that the complaint be dismissed; and

(b) may, where it finds that a complaint is justified in whole or in part, order the person against whom the finding was made to do one or more of the following:

(i) to stop the contravention complained of,

(ii) to refrain in future from committing the same or a similar contravention,

(iii) to make available to the person discriminated against the rights, opportunities or privileges he or she was denied contrary to this Act,

(iv) to provide compensation to the person discriminated against, including compensation for all or a part of wages or income lost or expenses incurred because of the discriminatory action, and

(v) to take whatever other action the board considers appropriate”.

58. The purpose of a remedy in the context of human rights was set out in Heintz v. Christian Horizons, 2008 HRTO 22, where the complainant was found to have been discriminated against based on sexual orientation when she experienced humiliation, personal attacks and a poisoned work environment after she disclosed being a lesbian. The complainant's workplace had a Lifestyle and Morality Statement that condemned same-sex relationships for staff members. The following general comments were made:

"[242] It is well established that the purpose of the Code is remedial, not punitive. Orders should provide fair and effective remedies for the victims of discrimination. In addition, the Code has a purpose to eradicate discrimination and remove discriminatory barriers and policies. In this regard, remedies should be crafted in a way to best ensure the discrimination will not reoccur and the underlying policies or behavior that resulted in the discrimination are removed. Human rights remedies can also have an important educational value, both for the parties to a complaint, and for the broader public. (Robichaud, supra. at para. 9; Ontario (Human Rights Commission) v. Simpsons-Sears, 1985 CanLII 18 (SCC), [1985] 2 S.C.R. 536 at p. 547 "O'Malley").

[243] In order for remedies to be fair and effective, they must be tailored to the particular facts in a case. The Code provides the Tribunal with considerable discretion in fashioning a remedy and the Courts have upheld remedial orders that are both expansive and novel. (see for example Canadian National Railway v. Canada (Human Rights Commission), 1987 CanLII 109 (SCC), [1987] 1 S.C.R. 114 "Action Travail des Femmes") But in all cases, the remedy must flow from the violation that has been found and must be designed to further the remedial purposes of the Code. (Metcalf v. Papa Joe's Pizza and Chicken Inc., 2005 HRTO 46 (CanLII); Pchelkina v. Tomsons (No. 2), 2007 HRTO 42 (CanLII))"

Personal Remedies

1. General Damages

59. A complainant is entitled to an award of general damages to compensate them for the loss of the right to be free from discrimination. As stated in Heintz:

"[245]... There is no ceiling on general damages. These awards should not be so low as to trivialize the violation or amount to a "licence fee" to discriminate.

Awards should focus on the effect of the discrimination on the complainant”.

60. A non-exhaustive list of factors used in assessing the appropriate quantum of general damages was set out in Heintz:

“[246]

- Humiliation experienced by the complainant
- Hurt feelings experienced by the complainant
- A complainant’s loss of self-respect
- A complainant’s loss of dignity
- A complainant’s loss of self-esteem
- A complainant’s loss of confidence
- The experience of victimization
- Vulnerability of the complainant
- The seriousness, frequency and duration of the discriminatory treatment”.

61. I find the discrimination and violation of S.R.’s rights to be serious and deserving of a damage award on the higher end of the range. The complainant seeks general damages in the amount of \$30,000.00. Factoring in the long term effect of the discrimination on S.R., the seriousness and duration of the discriminatory treatment, I award an amount of \$30,000.00 in general damages to S.R.

62. It is evident from the emotional testimony of S.R. that the violation of his rights in this matter has had a severe psychological impact on him. He described the humiliation he has experienced, the loss of dignity and the loss of respect. S.R. testified that he felt “de-humanized”. Evidence before me has shown that people witnessed a big change in S.R. He withdrew socially and he became a different person. S.R. experienced a loss of self-worth. S.R. still suffers from flashbacks.

63. Evidence from Dr. Ravalia and Theresa King, both professionals with many years of experience in their particular fields, is that S.R. will have long term implications. The evidence is that it is imperative for S.R. to have on-going counselling, medications and medical marijuana to assist him in the healing process, for a long period of time. Factoring in the significant cost of continuing care, I award \$15,000.00 as compensation for continuing care.

2. Special Damages

64. A complainant is entitled to be compensated for monetary losses suffered as a result of their rights having been violated. Complainants have a duty to mitigate their losses, but the onus falls on the Respondent to prove that the complainant failed to take reasonable steps to mitigate.

65. From the evidence before me, I find that S.R.'s efforts to mitigate his losses were very reasonable. The psychological impact on him from the discrimination he experienced has to be considered and the passage of time with no resolution. Considering his poor mental health at the time, I find that it was reasonable for S.R. to turn down the Respondent's first offer to have him return to the same pastoral charge to continue his discernment process. Had he chosen this offer, the evidence supports that S.R.'s health would have been severely jeopardized, making his circumstances worse.
66. The evidence further supports that S.R. did make offers of mediation in 2010 to the Respondent and they made no counteroffers to him. In the summer of 2017, S.R. made another offer to the Respondent and he received no reply from them.
67. I find that under the circumstances S.R. did the best he could to mitigate his losses. At one point he held down three employment positions while struggling daily with anxiety and depression. I find S.R.'s efforts to mitigate his losses were diligent and honest, and the best to be expected, considering his psychological well-being at the time. I have concluded that S.R. fulfilled his duty to mitigate by making reasonable efforts to obtain alternate employment.

Expenses

68. S.R. has claimed specific expenses that he has incurred, all of which are substantiated with receipts, and all of which I find to be reasonable. There were two expenses claimed that I removed from this head of damages, for periods of unpaid leave of absence, as these are benefits lost by S.R. that he can claim under the heading of lost benefits. The remaining expenses I approved for legal fees, airfare to attend hearings, hotel accommodations, taxi fares, meals, witness fees, cannabis prescriptions, use of annual leave to attend hearings, and contributions required to pension and long term disability benefits during unpaid leave. I award \$6,308.62 as compensation for these specific, out-of-pocket expenses.

Wage Loss

69. The principles behind an award of special damages is restitution. As stated in DiMarco v. Fabric, 2003 HRTO 4:

“[52] The purpose of special damages is to compensate the complainant by restoring him/her, as far as reasonably possible, to the position that he/she would have been in, had the discriminatory act not occurred. That being said, special damages must be proven through viva voce or documentary evidence or both. Speculation as to the monetary losses suffered by a complainant cannot form the

foundation of an order for special damages, particularly where those losses are indeed susceptible to such proof”.

70. The Respondent submits that there is no precedent in law for loss of wages to be awarded as a remedy, in cases where discrimination was found in the provision of services. They further submit that to do so would be inappropriate and unjust. They alternatively submit that any claim for lost wages is purely speculative.
71. At the time of the discrimination, S.R. was an inquirer and at the very beginning stages of a long process to advance to the ministry. The Respondent submits that S.R. was far removed from the job interview stage, or paid work of any kind, and there was a high likelihood that he would not have completed the long journey towards becoming an ordained minister. The Respondent submits, therefore, that any claim by S.R. for lost wages is inappropriate.
72. I respectfully disagree with the Respondent’s submission that there is no precedent in law for loss of wages in the context of a claim based on provision of services. There are several cases and the law is clear that wage loss is an appropriate head of damages in a human rights complaint, made in the context of the denial of services.
73. In Howard v. University of British Columbia (No. 1) (1993), 18 CHRR D/53, the Tribunal found that the hearing impaired complainant was discriminated against by the Respondent in their provision of services, because they failed to provide him with a sign language interpreter. In the remedy decision, Howard v. University of British Columbia (No. 2) (1993), 21 CHRR D/42, the Tribunal stated:

“...it was foreseeable that a student who is prevented from pursuing a career because of a discriminatory practice will suffer financial loss as a result of the discriminatory practice”.

The student was awarded \$30,636.00 for loss of wages caused by a three-year setback in his teaching career.
74. In Kelly v. University of British Columbia (No. 4) 2013 3CHRT 302, the Tribunal awarded the complainant significant compensation for lost wages arising from discrimination he experienced through an interruption in his residency program. The Tribunal stated that the complainant was “entitled to be made whole”.
75. Section 39 (l)(b)(iv) of the Act gives me discretion to compensate S.R. for all or part of any wages or income lost as a result of the discriminatory action he experienced.

76. In Gichuru v. The Law Society of British Columbia (No. 9) 2011 BCHRT 185, the Tribunal set out principles as a guide in assessing an award of wage loss:

“[300] First, the purpose of compensation is to restore a complainant, to the extent possible, to the position he or she would have been in had the discrimination not occurred.

Second, the burden of establishing an entitlement to compensation is on the complainant.

Third, in order to establish such an entitlement, the complainant must show some causal connection between the discriminatory act and the loss claimed.

Fourth, once a causal connection is established, the amount of compensation is a matter of discretion, to be exercised on a principled basis, in light of the purposes of the remedial provisions of the Act, and the purpose of the award”.

77. S.R. states that he lost the opportunity to complete his discernment process to enable him to pursue his dream job of being an ordained minister. As stated in Howard v. University of British Columbia (No. 2), it is foreseeable that a student who is prevented from pursuing a career because of a discriminatory act will suffer financial loss as a result and therefore I conclude that S.R. is entitled to be made whole as this is one of the remedial purposes of the Act.
78. In considering the appropriate approach to wage loss where the complainant, like S.R., has lost the opportunity for employment, the Tribunal in Winkelmeyer v. Woodlands Inn and Suites, 2012 BCHRT 312 stated that to establish actual damage, one does not require a probability, but rather, “a mere possibility, provided it was a serious one” is sufficient.
79. To establish the extent of the damage and to evaluate the monetary compensation, Winkelmeyer states that we should not disregard evidence that the job could have been denied in any event. The uncertainty respecting the possibility of hire must be factored into the decision of wage loss and damages must be reduced to reflect this uncertainty.
80. In situations similar to S.R.’s where he continued to receive employment income after the discrimination occurred, the Tribunal in Heintz awarded the differential between the complainant’s actual earnings for the appropriate period and the amount they would have earned if the discrimination had not occurred.

81. I have concluded that if S.R. had not been removed from his leadership duties in December, 2009, he was on track to complete the pathway to being ordained as a minister in the United Church. The evidence is that S.R. was very committed to entering the ministry, he was heavily involved with the church for many years, and he was seen by the congregation as being gifted. S.R. also had family support to pursue this career. I find that there is more than a mere possibility that he would have pursued this pathway to being ordained.
82. The evidence is that S.R. was very interested and anxious to pursue this career. He exhibited signs of strong interest by looking into the funding and available bursaries. I find that S.R. would have pursued a quick, fast route to become ordained and he would not have been slow to achieve his ultimate goal.
83. There is a discrepancy in the timing of when S.R. would have been ordained as a minister. S.R. claims he would have been ordained in the spring of 2013 and F.M.M., Executive Secretary of the NL Conference of the United Church, claims that the earliest date he could have been ordained was the spring of 2015. F.M.M. stated that some of S.R.'s pathway projection is not in accordance with normal practice. He was splitting up his year of internship over two summers, which F.M.M. stated does not normally occur and must be approved by the Education and Students Committee.
84. I find that S.R. did not prove, on a balance of probabilities, that his ordination date of spring 2013 is the correct date. F.M.M., as Executive Secretary, stated that the earliest S.R. could have been ordained was spring 2015, if he had followed the normal route. I find there to be a minimal chance that it would have been extended beyond the spring of 2015. I, therefore, accept that S.R. would have been ordained in the spring of 2015. I must now determine what S.R. would have earned if the discrimination had not occurred.
85. I find, on a balance of probabilities, that S.R. would have earned the incomes estimated on his pathway projection, including the allowances for housing and the tuition reimbursement. They are all claimable damages and they are consistent with what his plans were, when he started as an inquirer to begin his pathway to ministry. Further, I accept the amounts claimed by S.R. as he provided documentary evidence to support his figures.
86. In determining what pay scale to apply, I accept S.R.'s evidence that he would not have been provided with a manse, but would have been paid the living allowance. S.R.'s evidence was that he was willing to move anywhere and not restrict himself to small communities. The Respondent did not prove, on a balance of probabilities, that S.R. would have started his career in a small community, living in a manse. I, therefore, accept the pay scale with a living allowance and not the pay scale with a manse.

87. I further accept that there is a possibility that S.R. may not have completed the pathway to ministry, but there is no evidence before me upon which to conclude that this is a probable outcome. Prior to him being removed from his leadership duties, S.R. was heavily involved with the church and he was very committed to being ordained. He had achieved high grades in his courses with the Atlantic School of Theology, with the goal of obtaining his Masters of Divinity. I find that the ministry was no doubt the future path for S.R., and his strong devotion and commitment to the church would have guided him to achieving the end result of being an ordained minister of the United Church. In the circumstances, I have concluded that there should only be a 10 percent reduction in the award, to reflect the possibility that S.R. might not have completed the pathway to ministry.
88. I find that if S.R. had not been removed from his leadership duties in December, 2009, he was on track to being ordained in the spring of 2015. He would then have begun to serve as a minister at a pastoral charge in July, 2015. If S.R. had not been removed from his leadership duties, I find that S.R. could have earned the following income during the period of January, 2010 to December 2017:

October 20, 2009 – start of discernment

September, 2009 to December, 2009 – AST online courses

January, 2010 to April, 2010 – AST online courses
part-time employment
(20 hours/week at \$10.00 per hour) \$3,200.00

May, 2010 to August, 2010
– full-time summer employment
(40 hours/week at \$12.00 per hour) \$7,680.00

October, 2010 – end of discernment

September, 2010 to April, 2011 – lay student at AST;
- part time employment
(20 hours/week at \$10.00 per hour) \$6,400.00

April, 2011 to August, 2011 – employment as chaplain,
Canadian Forces Reserve
Entry scheme \$11,569.00 income
\$ 2,000.00 tuition

September, 2011 to April, 2012 – 1st year of schooling/Pine Hill Funding

- part-time employment \$ 6,400.00
- living allowance \$ 3,200.00
- books \$ 650.00
- tuition \$ 521.00

April, 2012 to August, 2012

- employment as chaplain \$11,569.00 income
- tuition \$ 2,000.00

September, 2012 to April, 2013 – 2nd year of schooling

- Part-time employment \$ 6,400.00
- tuition \$ 536.00

April, 2013 to August, 2013

- employment as chaplain \$11,569.00
- tuition \$ 2,000.00

September, 2013 to April, 2014 – internship

April, 2014 to August, 2014

- employment as chaplain \$11,569.00
- tuition \$ 2,000.00

September, 2014 to April, 2015 – 3rd year of schooling

- part-time employment \$ 6,400.00
- tuition \$ 585.00

Spring 2015 – ordination

July 1 to December 31, 2015: Category A salary \$17,304.00
 Housing allowance \$ 3,616.00
 Continuing education \$ 666.00

January 1 to December 31, 2016: Category A salary \$35,301.00
 Housing allowance \$ 7,378.00
 Continuing education \$1,359.00

January 1 to December 31, 2017: Category B salary \$37,296.00
 Housing allowance \$ 7,780.00
 Continuing education \$ 1,374.00

89. In total, had he not been removed from his leadership duties, I find that S.R. could have earned \$208,322.00 during this period. I did not impute an income during

the internship period from September, 2013 to April, 2014, as the evidence from F.M.M. is that the candidates are not paid in their 8 months of internship. From this earned income, a 10% contingency must be deducted to reflect the possibility that S.R. might not have completed the pathway to ministry. Therefore, I have deducted \$20,832.00 from the total earnings to December 31, 2017. The total income therefore is \$187,490.00.

90. S.R. earned the following amounts from 2010 to 2017 including employment insurance and bursaries:

2010 -	\$0.00
2011 -	\$0.00
2012 -	\$21,484.00
2013 -	\$30,435.00
2014 -	\$25,635.00
2015 -	\$47,534.00
2016 -	\$26,091.00
2017 -	\$25,481.00
Bursaries -	\$ 8,400.00

91. In total, S.R. earned \$185,060.00. The difference between S.R.'s actual earnings for the appropriate period and the amount he would have earned if the discrimination had not occurred is \$2,430.00.

92. I order the Respondent to pay to S.R. the sum of \$2,430.00 as compensation for lost wages.

Pension Accrual

93. If S.R. had been ordained in the spring of 2015, he would have accrued pension benefits commencing in July, 2015. The evidence of the pension accrual for clergy is as following:

July 1 – December 31, 2015	\$339.17
2016 (full year)	\$678.34
2017 (full year)	\$731.00

94. I find that if S.R. had been ordained in the Spring of 2015, he would have accrued pension benefits in the amount of \$1,748.51. S.R. did contribute to a pension at Memorial University; however, it was only for a very short period of time and the benefits accrued are not significant enough to deduct. I, therefore award \$1,748.51 as compensation for the clergy pension benefits that S.R. would have accrued had he been ordained in the spring of 2015.

Lost Benefits

95. I further order the Respondent to pay S.R. the sum of \$13,611.00 for his 6 month unpaid leave of absence from Topsail United Church in 2014 and \$1,310.00 for his unpaid leave from Memorial University in the fall of 2015. S.R. had to take time off from work, because of the discriminatory action and he was not paid during his time off; therefore, he is to be compensated accordingly in the amount of \$14,921.00.

Public Interest Remedies

96. Remedial orders are to be designed to prevent future discrimination. The Tribunal in Heintz discussed the appropriateness of public interest remedies and stated the following:

“[276] Remedial orders must flow from the violations found by the Tribunal. They should be broad, creative and effective. They must be targeted at removing the discrimination found and preventing future violations. But for remedies to be truly effective in achieving the goals of human rights legislation, they must make sense in the circumstances. Remedies that simply make grand statements or impose requirements that cannot be achieved will not eradicate the discrimination and remove barriers to equal access. This is not to say that only remedies that are easily achieved at little or no cost to a respondent are appropriate. To the contrary, where a remedy will be effective in achieving equality and the protection of human rights, human rights tribunals should not hesitate to make orders that require significant policy or operational changes, the adoption of particular programs, or measures that carry a heavy price tag. The object of the remedial order is to remove discrimination in a real, meaningful, effective and timely way”.

97. S.R. seeks a written apology from the Official Board of the pastoral charge and requests a publication of the apology in the United Church Observer that is distributed nationally.

98. S.R. further seeks human rights training for all members of the Board of Session and the Board of Management of the pastoral charge to be coordinated by the Human Rights Commission. He wants to be able to give a presentation at that training on the effects of discrimination on an individual, and to inform them how he has been personally affected by their discriminatory action.
99. S.R. wants an invitation from the pastoral charge in return and the opportunity to participate in the activities of the church and participate in worship services. He further seeks confirmation and certainty that the congregation are made aware of the new Mission Statement and new Vision Statement.
100. The Respondent agrees that the pastoral charge needs a lot of education and human rights training. The church wants closure and does not want this discriminatory action to ever happen again.
101. The Respondent agrees that it is appropriate for S.R. to be present at the training and for him to speak to the Official Board about the impact this discrimination has had on him.
102. The Respondent acknowledges that the listening circle has to take place with S.R. present.
103. The Respondent is willing to meet with S.R. and to provide pastoral care to him. They are prepared to provide S.R. with a letter of apology and they agree that the letter needs to be discussed and presented to the congregation, with the consent of S.R.
104. The Respondent seeks guidance from the Human Rights Commission on the wording of their new Mission Statement and new Vision Statement. They agree that there needs to be a wider distribution of these Statements amongst the pastoral charge.
105. I have considered the submissions from both parties. In light of the remedial powers under Section 39 of the Act, I am ordering the following remedies to aim at stopping and refraining the public and the Respondent in future from committing the same or similar contraventions:
 1. Review of the newly adopted Mission Statement and Vision Statement of the pastoral charge by the Human Rights Commission to ensure that both statements do not contain discriminatory language respecting sexual orientation.
 2. Confirmation provided to S.R. that the newly adopted Mission Statement and Vision Statement has been widely distributed amongst the pastoral charge.

3. Mandatory Human Rights training to be provided to all members of the Official Board of pastoral charge, including all members of Session and the Board of Management, that focuses on discrimination based on sexual orientation.
4. Mandatory workshop for all members of the Official Board, including all members of Session and the Board of Management on the topic of a healthy workplace and understanding policies of discrimination on the basis of sexual orientation.
5. Invitation by the Respondent to S.R. to attend and to participate in the training. An opportunity to be provided to S.R. for him to give a presentation at the training, on the effects of discrimination on an individual, based on sexual orientation.
6. The listening circle to be facilitated as part of the training, with the presence and participation of S.R.
7. Reconciliation training, beyond the Human Rights training, for all members of the Official Board, including all members of Session and the Board of Management of the pastoral charge, with a mandatory requirement for all members to attend.
8. Written apology to S.R. from the Official Board to be distributed to all of the pastoral charges in NL. The distribution of the written apology is to be done through the Conference Office of the United Church.
9. Service to be held at the church for all the congregation to attend, including S.R. A public apology to S.R. in the presence of the congregation and a discussion of their Mission Statement. The current clergy, Rev. G.S. and his predecessor, Rev. B.C. shall attend this service.
10. Invitation by the Respondent to S.R. to return to the pastoral charge and to participate in the activities of the church and in their worship services. Pastoral care to be provided to S.R. when required.

Pre-Judgment Interest

106. Pre-judgment interest is ordered on the damage awards, in accordance with the Judgment Interest Act.

Summary

107. I order the Respondent to pay to S.R. the following:
 - (a) \$30,000.00 in general damages for injury to dignity, feelings and self-respect;
 - (b) \$15,000.00 for cost of continuing care;

(c) \$6,308.62 for special, out-of-pocket expenses;

(d) \$2,430.00 as damages for lost wages;

(e) \$14,921.00 as compensation for lost benefits;

(f) \$1,748.51 for clergy pension accrual; and,

(g) Pre-judgment interest in accordance with the *Judgment Interest Act*.

108. I further order the public interest remedies set forth in paragraph 105 herein to be completed forthwith, in a timely fashion.

Adjudicator