

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: September 28, 29, 30 and October 1, 20 and 22, 2015

Decision: February 28, 2017

Appearances:

On Behalf of the Complainant:

S.R.

On Behalf of the Respondent:

J.T. and L.W.

On Behalf of the Commission:

Donna Strong

DECISION OF THE ADJUDICATOR

INTRODUCTION

1. A complaint was filed by S.R. on May 3, 2010 pursuant to Section 11 of the *Human Rights Act, 2010* (formerly section 6 of the *Human Rights Code*) alleging discrimination on the basis of sexual orientation. The complaint was laid against the Respondent, a pastoral charge in the Province of Newfoundland and Labrador.

NATURE OF THE COMPLAINT

2. On April 20, 2010 a complaint form was signed by S.R. wherein he described his complaint as follows:

“In about October, 2009, I became an Inquirer within the United Church of Canada. This means that I am seeking paid employment as an ordained minister. I am enrolled in a Masters of Divinity degree program and have been actively involved in my congregation. Also, I am openly gay.

On December 6, 2009, I spoke at my grandfather’s funeral, whereby I stated that he was accepting of my sexual orientation and of members of the gay community. Approximately four days after the funeral two members of the Official Board of the pastoral charge, delivered a letter to my parent’s house, stating that I have been removed from my church leadership duties including the music ministry. The Official Board is chaired by R.S. Participation in church activities is an important part of the inquirer process. In order to obtain employment as an ordained minister I am required to obtain a recommendation from the Session Committee, which is chaired by B.C. My participation in these activities is also important to me for spiritual reasons.

In a letter dated December 9, 2009, members of the Official Board note that the decision to withdraw my leadership roles was taken as a result of my use of inclusive language during my grandfather’s funeral. The Official Board has advised, however, that its members did not know for certain that I am gay until I spoke at the funeral.

The General Council (highest court) of the United Church of Canada has approved the ordination of gay individuals as well as the use of inclusive language, such as *Mother God*. However, the pastoral charge is a member of the Alliance of Covenanting Congregation (NACC), an association of United Church congregations that does not support the ordination of practicing homosexuals, same-sex marriages, or the use of inclusive language for God.

I believe that in removing my leadership roles at the pastoral charge, the Official Board discriminated against me on the basis of sexual orientation contrary to s. 6 of the *Human Rights Code*.”

3. S.R. alleges that he was excluded from all church activities because he publicly declared his sexual orientation at the funeral of his grandfather and he used inclusive language (“Mother God”) during a prayer, both of which were contrary to the Mission Statement of the church.

4. The pastoral charge denies that it withdrew S.R. from his leadership duties because of his sexual orientation. They submit that S.R. was disrespectful at the funeral of his grandfather, when he allegedly defied the policy of the congregation with the use of inclusive language. The pastoral charge denies that it discriminated against S.R. They state that despite rumours about the sexual orientation of S.R., he was accepted as a participant in the ordination process. They further submit that the decision to withdraw S.R. from his leadership activities was based on his behavior at his grandfather's funeral, when he used inclusive language.

ISSUES

5. The issues to be resolved are:
 - (i) Is there sufficient evidence, on a balance of probabilities, that the pastoral charge discriminated against S.R. by removing him from his leadership duties, on the basis of his sexual orientation?
 - (ii) If there is sufficient evidence of same, has the pastoral charge raised evidence to support a non-discriminatory reason for their decision to remove S.R. from his leadership roles?
 - (iii) Alternatively, is there an exception within the legislation which exempts the otherwise discriminatory practice of the church?

EVIDENCE AT THE HEARING

Testimony of J.T.

6. J.T. has been a full member of the pastoral charge for approximately 15-20 years. He was a member of the congregation in 1995 when the Mission Statement was adopted, which states that the pastoral charge does not support inclusive language of God, nor the ordination of self-declared and/or practicing homosexuals. J.T. is a member of the Official Board, a member of Session and he was appointed to be a member of the discernment committee for S.R.
7. J.T. testified that the sexual orientation of S.R. was not the reason for removing him from his leadership duties, including the music ministry. He stated that the Board Members were "not homophobic" and they never questioned his sexual orientation. He testified that the complaints received from the congregation were, to his knowledge, concerning S.R. using inclusive language at his grandfather's funeral.

8. On cross-examination, J.T. admitted that he was “somewhere in the middle” on the subject of homosexuals. In his opinion, it is a possibility that the congregation would not employ a gay minister. As a member of Session, J.T. testified that he would uphold the Mission Statement. He further testified that he felt “lectured” to and “chastised” by S.R. when S.R. spoke at his grandfather’s funeral of how the church was not supportive of his lifestyle. He found the tone of S.R.’s tribute to be offensive.
9. When questioned about the reference to an “outburst” in the Minutes of the Board Meeting, where the motion was passed to remove S.R. from all leadership duties, J.T. stated that the “outburst” referenced S.R.’s tribute and the manner in which he delivered the tribute to the congregation.
10. When asked if he would vote in favor of a gay minister being ordained at the pastoral charge, J.T. testified that he would, if that person met the spiritual needs of the congregation. J.T. further testified that despite the wording of the Mission Statement, he would consider a gay person being ordained. He admitted that his views have changed over the last five (5) years concerning the hiring of a gay minister, and that it has been a “growth experience” for him.

Testimony of M.P.

11. M.P. was the Chair of the discernment committee for S.R. She testified that at the first discernment meeting on November 8, 2009, the discernment committee who consisted of J.T., L.W., and P.S., were informed by S.R. of his sexual orientation. M.P. further testified that she observed the expressions on the faces of the discernment committee when S.R. disclosed his homosexuality.
12. M.P. stated that she witnessed discomfort from J.T. and L.W. when S.R. raised the issue of his sexual orientation.

Testimony of L.W.

13. L.W. has been a full member of the pastoral charge’s congregation for forty (40) years. She has served as a member of Session for eight (8) years and Vice-Chair of the Board of Management. Session appointed her to be on S.R.’s discernment committee.
14. L.W. testified that she did state at the first discernment meeting on November 8, 2009 that she “would have to pray” about her continuation on the discernment committee, after hearing S.R. disclose his sexual orientation. She stated however that her remarks had nothing to do with the sexual orientation of S.R., but rather, it had to do with his negative feelings toward the church. L.W.

testified that she was sympathetic to S.R. and her feelings never changed towards him.

15. On cross-examination, L.W. testified that at the Official Board Meeting on December 9, 2009, when the members voted to remove S.R. from all leadership duties, including the music ministry, the members felt that S.R. had chastised the church, during his reflection at his grandfather's funeral. She stated that many members did not approve of his tone, the manner in which he presented the reflection, and the content of his reflection. They felt lectured and chastised by S.R. when he spoke of how the church was not supportive of his lifestyle. L.W. testified that his message was "offensive" to the congregation and the reference in the Minutes of the Board Meeting to his "outburst" was partly referring to their feeling of being lectured to and chastised.
16. L.W. further testified that the focus at the Official Board Meeting was S.R.'s "behavior" at the funeral. She stated that his behavior was "upsetting" to some members of the congregation and members of S.R.'s family. The congregation was "shocked" she said by the tone used by S.R., his inclusive language and his "overall presentation" at the funeral.
17. L.W. did not attend the funeral and she confirmed that she did not read S.R.'s reflection prior to the Official Board Meeting, nor was the reflection read out at the meeting. L.W. did vote against S.R. and in favor of removing him from his leadership duties, including the music ministry, based on what she heard from others about his reflection and because he had used inclusive language.
18. On cross-examination, L.W. was questioned as to whether the Mission Statement of the pastoral charge represented the views of the congregation in 2009. She testified that she believed in 2009, that the Mission Statement "needed to be looked at". When asked if she is in support of the ordination of gay ministers, L.W. replied that she would not discriminate against gays and she is not homophobic.
19. When the Mission Statement in 1995 was adopted by the pastoral charge, L.W. testified that she "felt comfortable at that time" with the stance against the ordination of self-declared and/or practicing homosexuals. She further testified that "a lot of time has elapsed since then" and the Mission Statement no longer represents her views and beliefs concerning the ordination of gay ministers. She agreed that there may be more members of the congregation who would say that the Mission Statement no longer represents their religious beliefs.

Testimony of R.C.

20. R.C. has been a full member of the congregation of the pastoral charge for approximately thirty (30) years, and she acknowledges that she knows the congregation fairly well. She attended the grandfather's funeral on December 6, 2009 and she testified that S.R.'s reflection upset her and others in attendance. R.C. explained what had caused the upset and it was based around the fact that S.R. had "come out" and publicly declared his sexual orientation, and he used inclusive language.
21. R.C. further testified that she was aware that some of S.R.'s family members were upset about his disclosure of his sexuality. They were upset because S.R. "came out" and they did not believe it was appropriate. Two (2) members of the congregation walked out of the sanctuary at the evening worship service, when they saw S.R. sitting at the piano. Following the funeral, R.C. testified that members of the congregation had discussions with her. In her opinion, the "outburst" referenced in the Minutes of the Official Board Meeting was the public disclosure by S.R. at the funeral, of his sexuality.
22. On cross-examination, R.C. admitted that she is strongly against the ordination of gay ministers; however, she is aware of some members of the congregation who do not support her views. R.C. stated that despite being a member of the pastoral charge's congregation for over thirty (30) years, she is not familiar with its Mission Statement. She recalls seeing it at the church office, but does not recall ever having read it.
23. R.C. testified that in her opinion, the Mission Statement does not reflect the religious beliefs/views of all the congregation. She knows of members who do not support the Mission Statement.

Testimony of W.A.

24. W.A. has been an active member in the pastoral charge all of his life and in 2009 he was a member of the Board of Management. He testified that he did not attend the funeral on December 6, 2009; however, he did attend the evening worship service. He stated that he walked out of the sanctuary, after he heard what S.R. had said earlier that day, at his grandfather's funeral.
25. W.A. testified that he does not support the ordination of homosexuals. He believes that S.R. violated the Mission Statement twice at the funeral; firstly, with the use of inclusive language and secondly, with his public announcement of his sexuality. He admits that the reference to the "outburst" at the funeral, in the

Minutes of the Official Board Meeting, was the public disclosure by S.R. of his sexual orientation.

26. W.A. further testified that as a member of the congregation, he was satisfied with the musical talent of S.R. He stated that there “was never a problem with the quality and level of skill” that S.R. had at the piano.
27. On cross-examination, W.A. testified that the stance against the ordination of gay ministers in the Mission Statement of the pastoral charge is not his personal belief, but he “stands by his church” and therefore he must support the statement. He further stated that the church has a policy that he “cannot do anything about”. He agrees that as a member of the congregation he can speak out and request a change to the Mission Statement, but he does not do that because he feels that he has to “stand by” and support his church.
28. On a personal level, W.A. testified that he would not leave his church if the minister was gay. He stated that he does not believe in the Mission Statement but he feels that he has to abide by it.

Testimony of N.H.

29. N.H. was a member of the Board of Management for the pastoral charge and she testified that she has attended the funeral of S.R.’s grandfather, as well as the Board Meeting on December 9, 2009. She stated that the motion was made to remove S.R. from his leadership duties, including the music ministry, because he had used inclusive language at the funeral when he was told previously not to use it. She stated that S.R. had gone “against the wishes” of the church.
30. When asked to explain the reference to the “outburst”, in the Minutes of the Board Meeting, N.H. testified that this was referring to the way S.R. spoke at the funeral. She felt that he had “chastised the church and the community by things he had said” in his reflection, when he spoke of how his grandfather was “accepting of him” and his “lifestyle”.
31. N.H. further testified that the pastoral charge had “no problem” with the quality of music and the level of skill that S.R. provided at the piano. She stated that the decision to remove him from all leadership duties, including the music ministry, “had nothing to do with the music” he provided.
32. On cross-examination, N.H. testified that she agrees with the Mission Statement of the church in that self-declared homosexuals are not to be ordained as ministers. She believes that gays do not make good role models in society to

children and she was uncertain whether she would be able to stay at the church, if a gay minister was ordained for that pastoral charge.

33. N.H. testified that at the funeral, she observed that members of the congregation were “flushed” and “fanning themselves” during the reflection given by S.R. She said people were “reacting in a very uncomfortable way” partly because of the inclusive language he used and partly because they felt “lectured to by S.R. for not being tolerant and accepting gays”.
34. In relation to the Mission Statement of the church, N.H. believes that for some members of the congregation, their spiritual feeling may not be aligned with the Statement. She agrees that for some members, their personal beliefs are not those that are reflected in the church’s Mission Statement. She stated that there are divided opinions amongst the members of the congregation concerning the ordination of gay ministers.
35. N.H. stated that “things have changed in the community” and their Mission Statement should be reviewed.

Testimony of R.O.

36. In 2009, R.O. was a member of the Official Board, both as a member of Session and Board of Management. He testified that he attended the funeral on December 6, 2009 and he was in attendance at the Official Board Meeting on December 9, 2009.
37. R.O. heard the reflection of S.R. at the funeral and he testified that he was “surprised at what he was saying”. The public announcement by S.R. of his sexual orientation was “an issue” for R.O. He stated that it “wasn’t the place” for S.R. to express his sexuality.
38. R.O. was of the opinion that S.R. violated the Mission Statement of the Church in two (2) ways; firstly, he used inclusive language at the funeral and secondly, he publicly announced his sexual orientation. R.O. testified that the Mission Statement is aligned with his own personal views. It is his personal belief that self-declared homosexuals should not be ordained as ministers.
39. Despite his personal stance against the ordination of gays, R.O. testified that he did not let his personal beliefs come into play when he seconded the motion at the Board Meeting, to remove S.R. from all leadership duties. When questioned why he supported the vote to also remove S.R. from the music ministry, R.O. stated that he “wasn’t happy” with the way S.R. “conducted himself” at the funeral and the “actions” of S.R. at the funeral “bothered” him. R.O. testified that the

vote to remove S.R. had “nothing to do with his sexual orientation” and only had to do with his use of inclusive language.

Testimony of J.H.

40. J.H. has been the Clerk of Session for over twenty-five (25) years. He attended the funeral of S.R.’s grandfather and he testified that he was “surprised” to hear S.R. use inclusive language and he felt that S.R. spoke at the funeral “to present his own particular issue at that time”. He clarified that what he meant by “issue” was S.R.’s homosexuality. J.H. testified that it was “inappropriate” for S.R. to “discuss what he did at the funeral”.
41. On cross-examination, J.H. was asked to define the terminology of “outburst” and “ordeal” as referenced in the Minutes of the Board Meeting held on December 9, 2009. J.H. testified that the “outburst” and “ordeal” at the funeral was when S.R. publicly announced his sexuality.
42. J.H. is of the view that S. R. violated the Mission Statement twice at the funeral, by using inclusive language and by making his public announcement of his sexuality. J.H. testified that he supports the stance against the ordination of gays because the church “wants a minister who is spiritual” and a gay minister cannot fulfil that role.
43. J.H. testified that the congregation felt that it was “not appropriate” for S.R. to publicly disclose his sexual orientation at a funeral. He further stated that it was “not right to put this onto his family”, referring to the announcement of his sexuality. J.H. testified that it was “not something they wanted to hear” and “everything would have gone over 100% had he not disclosed his sexuality”. J.H. confirmed that this was his view and that of some members of the congregation. He said it was “quite possible” that everything would have been fine at the funeral, had S.R. not disclosed his homosexuality.
44. J.H. was aware that the Mission Statement of the church is under review and to his knowledge, “the wording will be quite different”. He stated that the Mission Statement has to be revised because “times have changed” and it “needs to suit the younger generation” as they have different views from the older generation.
45. J.H. was present at the Board Meeting on December 9, 2009 and he testified that S.R.’s sexual orientation was never raised, nor discussed at the meeting. He stated that they voted to remove S.R. from his leadership duties because he used inclusive language at the funeral, despite having been told not to, hours prior to the funeral.

Testimony of P.S.

46. P.S. has been a member of the pastoral charge's congregation for over twenty (20) years and a member of Session for six (6) years. She attended the funeral of S.R.'s grandfather and in her opinion, S.R. was "forceful" in using the phrase 'Mother God' in the delivery of his reflection, and she felt that the tribute was "more about himself rather than the grandfather". She stated that several people from the congregation could not believe that S.R. spoke about being a homosexual at his grandfather's funeral. They were "surprised" that he "came out" at a funeral, but were not upset that he was a homosexual.
47. P.S. was also present at the Board Meeting on December 9, 2009 and she stated that there was no discussion of S.R.'s sexual orientation, and that the only issue was his usage of inclusive language at the funeral. When she was questioned about the reference to an "outburst" in the Minutes of the Board Meeting, P.S. confirmed that this was referring to S.R.'s declaration of being a homosexual; when "he openly admitted to his homosexuality."
48. When questioned about her awareness of the Mission Statement of the pastoral charge, P.S. stated that she was "a little familiar" with it but could not remember the last time she had looked at it. When asked whether the Mission Statement had any importance to her, P.S. answered that it was important to "abide by the rules of the church". She stated that she "stands firm with the Mission Statement"; however, she also stated that if there was a spiritual need for a gay minister, it would "be acceptable" to her, which is contradictory to the terms of the Mission Statement.
49. P.S. stated that it was her personal belief that there is no reason why gays should not be ordained in the ministry. Yet again, this belief is totally against the Mission Statement of the pastoral charge. P.S. stated that the Mission Statement needs to be reviewed because some of the congregation did not know what the Mission Statement meant and possibly the stance against the ordination of homosexuals should be removed. She agreed that there were some people in the congregation who would have different views from hers.

Testimony of H.L.

50. H.L. has been the organist and choir director of the pastoral charge since 1987. He stated that S.R. was welcomed by the choir members and he was satisfied with the quality and level of music provided by S.R. H.L. was the organist at S.R.'s grandfather's funeral and he stated that he was "surprised" that S.R. "publicly disclosed his sexuality" at the service.

51. H.L. recalled hearing a few comments after the funeral from members of the congregation, and they were “displeased with the way S.R. presented himself”. He said people complained that S.R. “spoke too much about being gay” and they “didn’t expect to hear this”. H.L. remembered that the comments were negative and they were not pleased with S.R. using inclusive language at the funeral.
52. H.L. was present at the Board Meeting on December 9, 2009 and he does not recall S.R.’s sexual orientation being addressed. He stated that S.R. was removed from his role because of his usage of inclusive language and he had been previously told not to use it. When questioned whether he found the inclusive language offensive, H.L. stated that it was not an issue for him. He stated that the image of God is “both man and woman” and that if a new minister came to the pastoral charge and used inclusive language, he would still attend church and he would still support the pastoral charge.
53. H.L. agreed that there was no connection between playing an organ and using inclusive language. Yet his explanation for the need to remove S.R. from the music ministry was because of S.R.’s usage of inclusive language. H.L. could not remember why the Board Meeting was called, he could not remember any written complaints against S.R., and he could not recall on what basis he voted to remove S.R. from the pastoral charge. Like many of the Respondent’s witnesses, H.L. recalled very little; however, he was adamant that it was only the usage of inclusive language that resulted in removing S.R. from his leadership roles.
54. When questioned about the reference to an “ordeal” and an “outburst” in the minutes of the meeting, H.L. said the terms could possibly have been referring to S.R.’s “sexual disclosure” and were likely referring to “S.R.’s public disclosure of being gay”.
55. H.L. was a member of the pastoral charge when the Mission Statement was adopted in 1995. He had no real recollection of how the Statement came to be; however, he was aware that it is now being revised and he understood that some members of the congregation may want the clause removed that stands against the ordination of self-declared gays.
56. H.L. was not certain whether he agreed with all of the clauses of the Mission Statement, but he felt it had to be followed because it was adopted by his congregation. He agreed there may be more people in the congregation who shared his views. He said he would still continue to support the pastoral charge even if the clauses about inclusive language and the ordination of homosexuals were removed.

Testimony of Rev. R.J.

57. Rev. R.J. serves as the Program and Leadership Development Minister for the NL Conference. In an email dated August 10, 2011 from Rev. R.J., found at Tab 10 of the Investigation Report, he commented on the policy with respect to the ordination of gay ministers, wherein he stated:

“Our Policy around ordaining gay, lesbian and bi-sexual candidates for ministry – that sexual orientation, in and of itself, shall not be a barrier to becoming a minister, or in accepting a call or appointment. Pastoral charges are not supposed to ask about a person’s sexual orientation in interviewing or in selecting a minister. (Some charges, I think, who are against the idea of having a gay or lesbian clergy sometimes find ways to declare their opinion to perspective candidates, to dissuade them from applying...if you know what I mean.) So the quick response of our UCC policy, as I understand it, no, pastoral charges are not able to discriminate against a gay, lesbian or bi-sexual minister based on sexual orientation. (They have the power to choose their minister, or not, but cannot use sexual orientation as a basis for this decision. As above, not suppose to even ask!)”

Testimony of Rev. P.G.

58. Rev. P.G. was a member of the ENS Committee from 2003 to 2009 and she was present at the meeting on October 8, 2009, which was held in advance of the discernment process. She testified that the purpose of holding this meeting was for S.R. to decide whether he would continue with the discernment process at the pastoral charge and she stated that such meetings were not the normal practice.
59. Rev. P.G. had difficulty remembering the meeting but she did recall S.R. telling the Committee about his sexual orientation. She could not remember the ENS Committee encouraging S.R. to continue with the discernment process, nor could she recall the Committee suggesting to appoint two additional people from the District to “bring balance” to S.R.’s discernment committee.

Testimony of Rev. F.M.M.

60. Rev. F.M.M. is Executive Secretary of NL Conference of the United Church of Canada. She was filling in for Rev. B.B. in 2009, who was then the Executive Secretary of NL Conference. She recalled the dilemma in the early fall of 2009, having found out about the conflict directly from S.R.
61. Rev. F.M.M. described the conflict as S.R. being “a person of liberal faith” and he was in a pastoral charge with a congregation of “conservative faith”. She did not

recall Rev. B.C. calling her to discuss how to deal with the conflict, but she stated it was very common for clergy to call the Conference Office for advice. Rev. F.M.M. stated that the Conference Office would never have advised the clergy to remove S.R. from all leadership roles.

62. The issue of membership in the United Church of Canada was discussed and Rev. F.M.M. stated that to become a full active member, the requirements are a profession of faith in Jesus Christ through confirmation or coming forward to declare one's faith. She stated that if a pastoral charge wanted to make a substantive change to the requirements, they would have to apply to General Council, every pastoral charge would then have to vote and if there was a majority ruling, General Council would then make it part of the By-Laws for final approval.
63. Rev. F.M.M. stated that individual congregations do not have the power to add additional requirements for basic full membership, nor to change the requirements for full membership. The profession of faith in Jesus Christ is the only requirement, she advised, for full membership. She further testified that absolute agreement is not required; rather, an essential agreement with the overall faith of the pastoral charge is acceptable. She has never seen a congregation that has required absolute agreement with their Mission Statement.
64. Rev. F.M.M. stated that most congregations write their own Mission Statements. They are approved by the congregation, but the congregation does not have to agree with all of the statements within it. She explained that the purpose of a Mission Statement is to identify the faith beliefs of the congregation. She further advised that it would be a "best practice" policy for a pastoral charge to review and reassess their Mission Statement every five (5) years, to ensure that it still reflects the beliefs of their congregation. She agreed that a Mission Statement that had not been reviewed after fifteen (15) years, would not truly represent or reflect the views today of the congregation.
65. Rev. F.M.M. testified that conservative theologies are permitted by individual pastoral charges and congregations are allowed to have their own Mission Statements; however, the Mission Statements cannot be "hostile" towards anyone. She defined hostile as excluding someone or a group of people from a congregation, as this was not being inclusive. Rev. F.M.M. further testified that congregations are not told that they have to adhere to their Mission Statements.
66. When questioned about the pastoral charge's decision to remove S.R. from all leadership roles, Rev. F.M.M. confirmed that Session has the right to discipline their members. Section 153 (a) (ii) of *The Manual, 2007* of the United Church of Canada states:

“153 The duty of the Session is to oversee the spiritual interests of the Pastoral Charge or Congregation.

(a) It shall be the duty of the Session to have oversight of:

(ii) the conduct of members, with power to exercise discipline;”

Testimony of Rev. B.B.

67. In 2009, Rev. B.B. was the Executive Secretary of the NL Conference. He recalled receiving a telephone call from someone at the Board level of the pastoral charge informing him of the conflict that had arisen. To his recollection, the issue that caused the conflict had to do with a worship service and a funeral of a family member of S.R.'s. He testified that the crux of the concern was the usage of inclusive language by S.R. and the discomfort it had caused the congregation.
68. Rev. B.B. testified that full membership is open to all gay persons and this applies to all pastoral charges; otherwise, it violates the church policies of the United Church of Canada. He stated that the UCC policies stand that gay persons can be ordained and inclusive language is permitted. Rev. B.B. further stated that the UCC encourages congregations to use inclusive language but it cannot be mandated. Individual congregations are allowed to have Mission Statements that stand against the usage of inclusive language.
69. Rev. B.B. testified that each pastoral charge has the ability to make their own decisions about the direction of their church. A congregation has a lot of power in relation to whom they choose to ordain. Clergy are expected to uphold the Mission Statement of the church. Rev. B.B. stated that although the UCC would encourage pastoral charges not to stand against the ordination of gay ministers and the usage of inclusive language, if they still chose to incorporate such terms in their Mission Statement, nothing can be done about it.
70. Rev. B.B. stated that he has seen a fair degree of change in the congregations over the years, in that some have openly gay clergy. He stated that pastoral charges are encouraged to review their Mission Statements to ensure that they still reflect the religious views of their congregation. He agreed that revisiting the Mission Statements every five (5) years would be reasonable.

Testimony of Rev. B.C.

71. Rev. B.C. served as the Minister at the pastoral charge from 1995 to 2010, a total of fifteen (15) years. He agreed that to be ordained, one only has to be in essential

agreement with the doctrine of faith; that absolute agreement with the Mission Statement of a pastoral charge is not required.

72. Rev. B.C. remembered having discussions with members of Session advising them that S.R. did not have to be in absolute agreement with the stance against inclusive language in their Mission Statement. He had these discussions months prior to the funeral of S.R.'s grandfather.
73. Rev. B.C. did encounter homophobia, while serving at the pastoral charge, but never at a Board Meeting or Session Meeting from what he recalled. Some of the congregation were homophobic and struggled with understanding homosexuality. He stated that there has never been a gay ordained minister who has come to practice at this pastoral charge.
74. He further testified that the Mission Statement of a pastoral charge is a statement of faith given by the congregation, at "a particular point of time." He did not believe that the Mission Statement reflected all the views and beliefs of all the congregation, only a small core.
75. Rev. B.C. stated that over the years, he has seen the minds of the congregation broadening and expanding. He said in the years leading up to 2009, he witnessed some changes in the spiritual beliefs of some of the congregation. Not a large majority of them were in agreement with the Mission Statement and many were "struggling" with the strong language against the usage of inclusive language and against the ordination of gay ministers. Only a core section of the congregation were still in agreement with the Mission Statement; most of them found the language to be "too harsh".
76. Rev. B.C. testified that by 2009, the congregation had "outgrown" their Mission Statement. He felt that there had been a need to review the Mission Statement at least three (3) years leading up to 2009. Different views were being taken by some of the congregation and the Mission Statement no longer reflected the religious beliefs of all the congregation. Rev. B.C. stated that the Mission Statement was not a good representation of the beliefs of the congregation in 2009. From discussions he had with the members, some were more open in their views. He stated that in his fifteen (15) years as Minister of the pastoral charge, it was brought up several times, the need to revise the Mission Statement, as it no longer reflected the faith of the congregation.

Testimony of S.R.

77. On June 24, 2009 S.R. was recognized as an inquirer by the pastoral charge and he stated that nobody at that time knew of his sexual orientation. In October 2009,

he became an inquirer and began the process to become an ordained minister. On December 9, 2009 S.R. stated that he was removed from all leadership roles, including the music ministry, after the pastoral charge became aware of his sexual orientation, when he openly declared his sexuality at the funeral of his grandfather.

78. S.R. testified that he knew of the Mission Statement of the pastoral charge and it concerned him because of the stance against the usage of inclusive language. He sent emails to Rev. F.M.M. expressing his concerns and she discussed them with M.P. who decided to have a meeting with the ENS Committee in advance of the discernment process.
79. S.R. stated that at the meeting with the ENS Committee he told them of his sexual orientation. It was decided to appoint two (2) additional representatives to his discernment committee from the District, to give “a balance”, because the others were conservative in their views and not in line with the general policies of the United Church of Canada. S.R. testified that the ENS Committee told him that he could continue his discernment at the pastoral charge and he could use his speech freely.
80. On November 8, 2009 S.R. had his first meeting with the discernment committee who consisted of three (3) members: J.T., L.W., and P.S. At this meeting, S.R. said he talked about his sexual orientation and he asked the members if they were comfortable to continue sitting on the committee. He said he disclosed his sexuality at the meeting because he knew that everything said at the meeting was confidential and was not to be disclosed to the congregation.
81. S.R. testified that when L.W. was asked if she was okay with staying on the committee, knowing he was gay, she replied that she “would have to pray” about it. J.T. said he had been against gays being ordained but was now “in the middle” on the issue. S.R. said P.S. looked “stunned and was almost in tears” when he announced his sexuality. S.R. stated that there was silence in the room and expressions of shock and discomfort on their faces.
82. S.R. testified that on December 6, 2009, he gave a tribute at the funeral of his grandfather. He spoke of his grandfather’s acceptance of him being gay and how his grandfather’s life was an example of how one should accept people in life, despite their differences. S.R. testified that this was the first time members of the congregation heard about his sexuality. It was a public disclosure of his sexual orientation for the first time.
83. S.R. further testified that he gave a private, short prayer using the words “Mother God” before the tribute. He had been told previously not to use inclusive language and to remove it from one of the church bulletins, which he did.

84. S.R. stated that later that same evening he went back to the pastoral charge to play the piano, and he witnessed a few members of the congregation walk out of the church.
85. S.R. testified that on December 10, 2009 he was hand-delivered a letter dated December 9, 2009 from the Official Board of the pastoral charge, which stated in part as follows:
- “With deep regret, we, the Official Board, has had to deal with fallout resulting from your behavior at your grandfather’s funeral on Sunday, December 6, 2009. Consequently, we were faced with having to make a very difficult decision. After much deed soul-searching, discussion and prayer, a motion was made and passed unanimously that “In light of the attitude displayed by S.R’s actions at his grandfather’s funeral, particularly his disregard for the directive not to use inclusive language, the negative effect that it has had on our congregation and his lack of compassion shown to his grieving family, it is moved that S.R. not be permitted to take any leadership role in worship in our church, including the music ministry.” In spite of this decision, we want you to know that you are welcome to come to worship as a part of our congregation. We pray God’s blessing on you.”
86. S.R. questioned why he could not have been allowed to continue playing the piano, as inclusive language is not used to play music. He questioned why the need to immediately remove him from all leadership roles, including the music ministry.
87. S.R. further testified that the pastoral charge told him that he had to be in absolute agreement with the terms of their Mission Statement. J.T. said it was a sign of disrespect to the congregation for S.R. to use inclusive language and S.R. disagreed. S.R. stated that the by-laws of the UCC only required an essential agreement with the congregational statement of a pastoral charge, not an absolute agreement.
88. S.R. testified that despite the Respondent’s statements to the contrary, he was excluded from all leadership roles once he publicly stated his sexual orientation. He stated that despite the UCC approving the ordination of homosexuals and inclusive language, the pastoral charge did not approve and they therefore withdrew him from all activities, including the music ministry. S.R. alleged that this action is discriminatory on the basis of sexual orientation.

THE LAW

89. Pursuant to section 9(1) of the *Human Rights Act, 2010* (“the Act”), sexual orientation is a prohibited ground of discrimination. It states as follows:

“9.(1) For the purpose of this Act, the prohibited grounds of discrimination are race, colour, nationality, ethnic origin, social origin, religious creed, religion, age, disability, disfigurement, sex, sexual orientation, gender identity, gender expression, marital status, family status, source of income and political opinion.”

90. Section 11(1) of the Act defines discrimination as follows:

“11.(1) A person shall not, on the basis of a prohibited ground of discrimination,

- (a) deny to a person or class of persons goods, services, accommodation or facilities that are customarily offered to the public; or,
- (b) discriminate against a person or class of persons with respect to goods, services, accommodation or facilities that are customarily offered to the public”.

91. Section 11(3)(d) of the Act provides an exception that exempts discriminatory practice. It states as follows:

“11.(3) Subsection (1) does not apply

- (d) to a restriction on membership on the basis of a prohibited ground of discrimination, in a religious, philanthropic, educational, fraternal, sororal or social organization that is primarily engaged in serving the interests of a group of persons identified by that prohibited ground of discrimination;”

92. The burden of establishing a *prima facie* case of discrimination is on the complainant. The onus then shifts to the Respondent to prove otherwise, as stated by the Supreme Court of Canada:

“A *prima facie* case in this context is one which covers the allegations made in which, if they are believed, is complete and sufficient to justify a verdict in the complainant’s favour in the absence of an answer from the respondent/employer.

If these elements are proved, there is an evidentiary onus on the respondent to provide an explanation of events equally consistent with the conclusion that

discrimination on the basis prohibited by the Code is not the correct explanation. If the respondent does proffer an equally consistent explanation, the complaint of discrimination must fail for the onus of proving discrimination ultimately rests on the Commission (Shakes v. Rex Pak Ltd., (1981) 3 C.H.R.R. D/1001 (Ont. Board of Inquiry) *Ontario Human Rights Comm. v. Simpson-Sears Ltd.* [1985] 2 SCR 536”

93. As identified in *Andrews v. Law Society of British Columbia*, [1989] 1 SCR 143, in the context of human rights, the meaning of discrimination has been widely recognized to mean the following:

“I would say then that discrimination may be described as a distinction, whether intentional or not based on grounds relating to personal characteristics of the individual or group, which has the effect of imposing burdens, obligations, or disadvantages on such individual or group not imposed upon others, or which withholds or limits access to opportunities, benefits, and advantages available to other members of society. Distinctions based on personal characteristics attributed to an individual solely on the basis of association with a group will rarely escape the charge of discrimination, while those based on an individual’s merits and capacities will rarely be so classed.”

94. The courts have applied a wide and liberal interpretation of the meaning of “services...that are customarily offered to the public” that are protected under human rights law. In *Gould v. Yukon Order of Pioneers*, [1996] 1 SCR 571, the Supreme Court of Canada stated that to determine whether a service attracts the anti-discrimination prohibition and falls within the meaning of “services to the public”, one must first identify the service in question, then determine whether that service creates a public relationship between the service provider and the service user.
95. Section 11(5) of the Act further states that a segment of the public is included in the meaning of “public”; therefore, the fact that the service is only available to a restricted section of the public, does not mean that the service cannot be considered to be available to the public, within the meaning of the Act. In other words, it does not have to be the public at large.
96. There are exceptions to discrimination in the provision of services that are customarily offered to the public. Section 11(3)(d) of the Act sets out specific situations where the general prohibition against discrimination in the provision of services to the public does not apply.
97. The Supreme Court of Canada in *Brossard v. Quebec*, [1988] 2 SCR 279 commented on the purpose and meaning of having an exception to discrimination in certain circumstances as provided in the legislation. The court noted that

exception provisions are designed “to promote the fundamental freedom of individuals to associate in groups, for the purpose of expressing particular views or engaging in particular pursuits.” The institution must have “as a primary purpose the promotion of the interests and welfare of an identifiable group of persons” characterized by a common ground such as religion.

ANALYSIS

Issue One

98. Has the complainant established, on a balance of probabilities, that the pastoral charge discriminated against him on the basis of his sexual orientation, contrary to Section 11 of the Act?
99. The court in *Eadie and Thomas v. Riverbend Bed and Breakfast*, 2012 BCHRT 247, held that sexual orientation only has to be a factor, not the only, sole factor, to have a finding of discrimination. Therefore, in the case at hand, the question to ask is whether I found the sexual orientation of S.R. to be a factor in the pastoral charge’s decision, to remove him from his voluntary leadership position in the church.
100. The Minutes of the Board Meeting that was held on December 9, 2009 outline the factors that were considered by the Board Members, in arriving at their decision to remove S.R. from all leadership roles in the church, including the music ministry. The Minutes state that an outline was presented to the Board “...as to the situation that needed to be dealt with...that being the situation that centered around **the ordeal** at the funeral of the late Mr. R.R.” (**emphasis is added**).
101. The Minutes continue to state that a vote was taken “after a very sensitive and lengthy discussion around this particular matter”. The Board members voted for S.R. not to be permitted to take any leadership roles in the church “because of **the outburst** at his grandfather’s funeral, in light of the event of inclusive language that took place; also the way he conducted himself with an evident lack of concern for his family and the congregation” (**emphasis added**).
102. In reviewing the letter that was delivered to S.R. on December 10, 2009 from the Official Board, it states in part:

“With deep regret, we...has had to deal with that...**fallout** resulting from **your behavior** at your grandfather’s funeral...a motion was made and passed unanimously that...In light of **the attitude displayed** by S.R.’s actions...particularly his disregard for the directive not to use inclusive language,

the negative effect that it has had on our congregation and his lack of compassion shown to his grieving family, it is moved that S.R. not be permitted to take any leadership role in worship in our church, including the music ministry” (**emphasis added**).

103. In reviewing the evidence of the witnesses, J.T., L.W., R.C., W.A., N.H., R.O., J.H., P.S. and H.L. all agreed that the reference in the Minutes to “the ordeal” and “the outburst” at the funeral was S.R.’s public disclosure of his homosexuality. J.T., L.W. and N.H. testified that members of the congregation including themselves, felt “lectured to” and “chastised” by the tribute S.R. gave at the funeral, when he spoke of how openly accepting his grandfather was of his sexuality.
104. R.C. testified that S.R.’s tribute was upsetting to her and others in the congregation because S.R. had “come out” and publicly declared his sexual orientation and he has used inclusive language. N.H. testified that she witnessed people at the funeral “reacting in a very uncomfortable way”, they were “flushed” and “fanning themselves” partly because S.R. used inclusive language and partly because they felt lectured to by him, for “not being tolerant and accepting of gays”. N.H. stated that she was uncertain whether she would be able to stay at the church, if a gay minister was ordained, because she believes that gays do not make good role models in society to children.
105. W.A., R.O. and J.H. all testified that S.R. violated the Mission Statement of the pastoral charge twice at the funeral, by using inclusive language and by publicly announcing his homosexuality. R.O. further testified that the public announcement by S.R. of his sexual orientation was “an issue” for R.O. because he felt that it was not appropriate for S.R. to express his sexuality at the funeral. He agrees that self-declared homosexuals should not be ordained.
106. From hearing the evidence, most of the witnesses were of the opinion that the public disclosure from S.R. of his homosexuality was offensive to some of the congregation. They were shocked, upset and felt this behavior at the funeral was inappropriate. Clearly this behavior is what was referenced in the minutes of the Board Meeting when the members voted to remove S.R. from his leadership roles. I find there is sufficient evidence, on a balance of probabilities, that the sexual orientation of S.R. was a factor in the pastoral charge’s decision.
107. I am satisfied, therefore, that S.R. has established, a *prima facie* case, that the Respondent discriminated against him on the basis of his sexual orientation, contrary to section 11 of the Act.

Issue Two

108. The complainant has met the burden of establishing a *prima facie* case of discrimination; therefore, the onus now shifts to the Respondent to prove otherwise. The questions to be answered are: (i) whether S.R. was denied a service that is customarily offered to the public; and, (ii) has the Respondent raised sufficient evidence to support a non-discriminatory reason for their decision to remove S.R. from his leadership duties?
109. The discrimination in question relates to S.R. being denied continuation in his volunteer leadership duties of the church, following his public disclosure of his homosexuality at his grandfather's funeral. Does his membership as a voluntary church leader fall within the meaning of "a service...customarily provided to the public" as defined in section 11(1) of the Act?
110. I am satisfied that the "service" which S.R. was denied, based on his sexual orientation, was his ability to continue in his voluntary church leadership. Because of his sexual orientation, the Respondent imposed limitations on S.R. which resulted in the withholding of opportunities and advantages available to other members of the public. This clearly falls within the meaning of "discrimination".
111. I am further satisfied that providing religious services is a public service, and S.R.'s quest to become a minister was a service customarily offered to the public. In the course of his leadership duties and the discernment process, S.R. was providing a service to the public. He was in the early stages of the ordination process and a person must begin their process in their home congregation. There are specific criteria needed to be met in order to complete the discernment process and by removing S.R. from all leadership roles in the church, the Respondent denied him the ability to continue in his voluntary church leadership, resulting in him being unable to complete the discernment process in his home congregation.
112. The fact that it was only a small sector of the public who would seek to be part of the church leadership during the discernment process does not mean that this service cannot be considered to be available to the public, as defined by the Act. Therefore, I am satisfied that a public relationship existed between the service user and the service provider in this matter, and the service in question attracts the anti-discrimination prohibition and falls within the meaning of "services...that are customarily offered to the public".
113. It must now be determined whether the Respondent has raised sufficient evidence to support a non-discriminatory reason for their decision to remove S.R. from his leadership roles. The testimony of the witnesses for the Respondent varied. Most of the evidence led suggested that they removed S.R. because of his usage of inclusive language at the funeral of his grandfather. They had asked him on previous occasions not to use inclusive language and they were offended when he

did not comply with that portion of their Mission Statement. However, the Respondent's witnesses also stated that most of the congregation viewed S.R. as having violated two (2) parts of their Mission Statement; the usage of inclusive language and the public disclosure of his homosexuality.

114. The Mission Statement of the pastoral charge was adopted in 1995. Part of the Mission Statement states as follows:

"We stand against inclusive language for God, the ordination of self-declared and/or practicing homosexuals, and same gender covenant relationships."

115. Despite the Respondent's position that the sexual orientation of S.R. was not a factor in their decision to remove him from all leadership roles, including the music ministry, a significant portion of the evidence heard revealed the contrary. There was a strong emphasis that members of the pastoral charge were upset and disturbed by S.R. publicly declaring his sexual orientation at the funeral.
116. I question the need to also remove S.R. from the music ministry, if the only reason for removing his leadership duties was due to his usage of inclusive language. When this question was asked to the witnesses for the Respondent, they agreed that there was no connection between playing music and using inclusive language. In fact, the evidence by the Respondent's witnesses themselves was that the pastoral charge had been very pleased with S.R.'s musical abilities.
117. The evidence of J.H. was that "everything would have gone over 100% had he not disclosed his sexuality". This statement in itself confirmed the views of most of the witnesses heard on behalf of the Respondent. The evidence led pointed towards a common consideration when the Respondent made their decision to remove S.R. It is evident to me that S.R.'s sexual orientation and his public disclosure of his sexuality at the funeral, was a factor in removing him from all his leadership duties.
118. From the testimony of the witnesses, I am not satisfied that the Respondent has raised sufficient evidence to support a non-discriminatory reason for their decision to remove S.R. from his leadership roles.

Issue Three

119. Section 11(3)(d) of the Act provides exceptions where the general prohibition against discrimination in the provision of services to the public does not apply. The question to be asked is whether the discriminatory practice of the Respondent is exempt, because it falls under one of the exceptions within the legislation.

120. Specifically, Section 11(3)(d) states that the prohibition does not apply:
- “(d) to a restriction on membership on the basis of a prohibited ground of discrimination, in a religious, philanthropic, educational, fraternal, sororal or social organization that is primarily engaged in serving the interests of a group of persons identified by that prohibited ground of discrimination;”
121. The Supreme Court of Canada in *Brossard v. Quebec*, [1988] 2 SCR 279 held that the organization must have, as a primary purpose, the promotion of the interests of an identifiable group of persons characterized by a common ground such as religion. Therefore, to fall within the exception of section 11(3)(d) of the Act, I must be satisfied that the Respondent was promoting particular religious views.
122. I must determine whether the pastoral charge is a religious organization that is primarily engaged in serving the interests of a group of persons, identified by religious beliefs, that support the exclusion of gay leaders in the church.
123. I find that the group of persons whose interests are being served by the pastoral charge is the congregation for that particular church. The particular interests of the congregation are the religious beliefs and practices as accepted by that church.
124. The evidence of the Respondent was that the Mission Statement of the pastoral charge was voted on at a meeting of the congregation and approved in 1995. According to the Respondent, the Mission Statement is a policy statement representing the religious beliefs of the congregation.
125. The testimony of J.H. elaborated on the process of adopting the Mission Statement in 1995. He was present at the meeting and he recalled how it was adopted by the congregation. J.H. stated that it was voted on by those who attended, which he estimated to be in the range of 70 to 80 people. He acknowledged that only a small number of the congregation voted on the Mission Statement.
126. The evidence of Rev. B.C. was that the Mission Statement was “a statement of faith given by the congregation at a particular point of time.” He acknowledged that there was a wide variety of spiritual views at the pastoral charge and the Mission Statement only reflected a small core of the congregation.
127. Rev. B.C. served as the Minister for fifteen (15) years and he testified that the religious beliefs of the congregation were broadening. He stated that it was brought up to him on several occasions, over the fifteen (15) year period, that the Mission Statement needed to be changed. He further stated that in 2009, a large

majority of the congregation were no longer in agreement with some of the terms of the Mission Statement.

128. Rev. B.C. testified that by 2009, the congregation had “outgrown” their Mission Statement. It was no longer a good representation of their religious beliefs.
129. Rev. F.M.M. testified that it is “best practice” for a congregation to review its Mission Statement every five (5) years, because society changes and views of its members change. She stated that the purpose of a Mission Statement is to identify the faith beliefs of a congregation. She agreed that a Mission Statement that had not been reviewed for over fifteen (15) years would not truly represent the faith beliefs of the congregation today.
130. Rev. B.B. testified that he has seen a “fair degree of change” in congregations over the years. They are more liberal in their views and he stated that congregations are now willing to have openly gay clergy and same gender marriages. Rev. B.B. testified that pastoral charges are encouraged to review their Mission Statements every five (5) years, to ensure that the Statement still reflects the religious views of its congregation.
131. From all the evidence heard, none of the witnesses could recall the pastoral charge’s Mission Statement ever having been reviewed since its adoption in 1995. P.S. testified that she was “a little familiar” with the Mission Statement; R.O. testified that he thought he may have read it once in the past; N.H. stated that she thought the Mission Statement might have been posted in the church; R.C. testified that despite being in the congregation for forty (40) years, she was not familiar with the Mission Statement and did not recall ever having read it; and J.T. confirmed that the Mission Statement of the pastoral charge had not been reviewed since its adoption twenty (20) years ago.
132. Am I satisfied that the Mission Statement represents the true faith beliefs of the people it is serving? R.C. testified that she does not believe the Mission Statement reflects the religious views of the congregation. She knows of members who do not support the Mission Statement. N.H. testified that for some of the congregation, their spiritual beliefs are not aligned with the Mission Statement. She believes there are divided opinions amongst the members. L.W. testified that the Mission Statement represented her beliefs back in 1995, but it does not anymore. She believes there are more members of the congregation who would agree that the Mission Statement does not represent their religious views.
133. W.A. testified that he does not believe that all of the congregation are against the ordination of homosexuals, despite the wording of the Mission Statement. J.T. testified that he would vote in favor of a gay person being ordained, if they met the

spiritual needs of the congregation. P.S. testified that there is no reason why gays should not be ordained in the ministry. H.L. testified that he would continue to support the pastoral charge, even if the Mission Statement is revised to remove the stance against inclusive language and the ordination of self-declared homosexuals. This is a clear indication that the current wording of the Mission Statement does not reflect his faith beliefs themselves.

134. I am satisfied from the evidence that some of the congregation felt obliged to uphold a Mission Statement that did not even represent their personal, faith beliefs. There is a disconnection between their personal views and what the Mission Statement declares. In particular, H.L. said if a new minister came to the pastoral charge and used inclusive language, he would still attend church and he would still support the pastoral charge. Yet, H.L. voted to remove S.R. on the basis of him using inclusive language, because he said S.R. violated the Mission Statement that was adopted by congregation. H.L. felt obliged to follow the Mission Statement, only because it was adopted by the congregation, not because it was his personal views.
135. P.S. said her personal view is that if there was a spiritual need for a gay minister, she would accept their ordination. However, she believed it was very important to abide by the rules of the church and stand firm behind the Mission Statement, despite the Statement being contrary to her personal beliefs.
136. J.T. testified that despite the wording of the Mission Statement, he would recommend a gay inquirer becoming a minister at the pastoral charge. He further stated that he would not take an active stand against or to prevent the ordination of gay ministers.
137. W.A. testified that the stance against the ordination of self-declared homosexuals in the Mission Statement is not his personal belief; he only supports it because it is in the Mission Statement of his church that he “stands by”. W.A. further testified that the pastoral charge has a policy that he “can’t do anything about” because he “stands by his church”.
138. One must question how sincerely held are these beliefs? The evidence shows that some members of the pastoral charge felt obliged to uphold the Mission Statement, that did not even represent their personal views. I am satisfied that the spiritual beliefs of the Mission Statement were not sincerely held beliefs of the congregation. Even though the beliefs are stated in the Mission Statement, the evidence does not support that the members of the pastoral charge in 2009, sincerely held these beliefs themselves.

139. I, therefore, find that the Mission Statement did not represent the religious beliefs of the congregation in 2009. The congregation were all being instructed by an outdated document that did not reflect their sincerely held beliefs. Accordingly, the exception in section 11(3)(d) of the Act does not apply.

CONCLUSION

140. I find that there has been discrimination against the Complainant by the Respondent on the basis of sexual orientation, which is not excepted under section 11(3)(d) of the Act.

Adjudicator