

PRINCE EDWARD ISLAND HUMAN RIGHTS PANEL

File 1040-99

BETWEEN:

THE REVEREND GAEL MATHESON

COMPLAINANT

AND:

**PRESBYTERY OF PRINCE EDWARD ISLAND
AND OTHERS**

RESPONDENT

DECISION

Hearing Dates: Nov 23 - 25, 2004; April 25, 26, 27, & 28; June 1, 2, 3, 6, 7, 13, & 14;
September 7, 8, 9, & 12; October 12, 13 & 14; December 12, 13 & 14, 2005; and
January 23, 24 & 25, 2006

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CASES & LEGAL TEXTS CITED

Ayanma v. French School Board, [2002] PESCAD 5

O'Malley v. Simpson-Sears, [1986] 2 S.C.R. 536

Proving Discrimination in Canada, Beatrice Vizkelety, (Vancouver: Carswell, 1987)

Hearings Before Administrative Tribunals, Robert W. MacAulay & James L.H. Sprague (Scarborough: Carswell, 1995)

Law of Evidence in Canada 2nd ed., John Sopinka et al., (Toronto: Butterworths, 1998)

Radek v. Henderson Development (Canada) Ltd. (No. 3), (2005), 52 CHRR D/430, 2005 BCHRT 302

McEvoy v. The Best of Care Ltd. (2006), CHRR Doc. 06-401 (N.L. Bd. Inq.)

Robichaud v. Canada (Treasury Board) (1987), 8 C.H.R.R. D/4326 (S.C.C.)

Lanteigne v. Sam's Sports Bar Ltd. (1998) CHRR Doc. 98-134 (B.C.H.R.T.)

Sexual Harassment in the Workplace (3rd), Arjun P. Aggarwal & Madhu M. Gupta, (Toronto: Butterworths, 2000)

Janzen v. Platy Enterprises Ltd. (1989), 10 C.H.R.R. D/6205 (S.C.C.)

Wall v. University of Waterloo (1995), 27 C.H.R.R. D/44 (Ont. Bd. Inq.)

Israeli v. Canadian Human Rights Commission (1983), 4 C.H.R.R. D/1616 (C.H.R.T.)

McAvinn v. Strait Crossing Bridge Ltd. (No.4) (2001), 41 CHRR D/38 (Canadian Human Rights Tribunal)

Andrews v. Law Society of British Columbia (1989), 56 D.L.R. (4th) 1 (S.C.C.)

LEGISLATION CITED

Prince Edward Island *Human Rights Act*, R.S.P.E.I. 1988, Cap. H-12

THE COMPLAINT

1. On February 16, 1998, the Reverend Gael Matheson filed a complaint with the P.E.I. Human Rights Commission in which she alleged the “Presbytery of Prince Edward Island and members thereof and the Murray Harbour North (Presbyterian) Pastoral Charge and members thereof” had discriminated against her in employment on the basis of sex.

EXECUTIVE DIRECTOR’S DECISION

2. On March 26, 1998, the Executive Director of the Commission dismissed the complaint pursuant to s. 22(4)(a) of the *Human Rights Act*, R..S. P.E.I. 1988, Cap. H-12 (the “*Act*”) as being without merit because it was made outside the one-year limitation period stipulated by s. 22(2) of the *Act*.

CHAIRPERSON’S REVIEW

3. Reverend Matheson requested that the Chairperson review the Executive Director’s decision pursuant to section 25 of the *Act*. The Chairperson reviewed the decision and, on July 30, 1998, he concurred with the Executive Director.

JUDICIAL REVIEW (# 1) OF CHAIRPERSON’S DECISION

4. Reverend Matheson sought a judicial review of the decision of the Chairperson. It was heard in the Supreme Court on September 14, 2001. In *Matheson v. Presbytery of Prince Edward Island*, [2001] P.E.I.J. No. 109 (P.E.S.C.T.D.) Justice Matheson found that the *Act* contemplates the concept of continuing contravention, and that the Commission had committed an error when the Chairperson failed to inquire into the nature and time of alleged reprisals referred to by the Complainant. She remitted the matter back to the Commission Chairperson with directions for further inquiry and review.

CHAIRPERSON’S REVIEW

5. The Chairperson carried out further inquiry and review. He found no evidence of new acts which may be the basis of separate violations and no evidence of reprisals as contemplated by the *Act*. In a decision dated June 12, 2002, the Chairperson again dismissed Reverend Matheson’s complaint.

JUDICIAL REVIEW (#2) OF THE CHAIRPERSON’S DECISION

6. Reverend Matheson again sought judicial review of the Chairperson's decision based on two grounds. In *Matheson v. Human Rights Commission*, [2003] P.E.I.C.T.D. 87 Justice Jenkins found that the complaint was made in accordance with s. 22(2)(b) of the *Act* and directed the Executive Director to proceed to deal with the complaint in accordance with his functions as stated in s. 22(3) of the *Act*.

THE RESPONSE

7. On March 31, 2004, the Presbytery of Prince Edward Island filed a response. The response denied the allegation of discrimination stating that the respondents at all times acted in good faith and made earnest efforts to support Reverend Matheson and further claiming that Reverend Matheson's conduct alienated her from her congregation(s) to the point where the pastoral tie was no longer workable or sustainable.

BACKGROUND TO THE COMPLAINT

8. The Complainant, Reverend Gael Matheson, is an ordained Minister of the Presbyterian Church of Canada who currently resides in Charlottetown, Prince Edward Island. In 1983, Reverend Matheson was appointed for a two year term to the Murray Harbour North Pastoral Charge by the Church's Board of World Missions. The Charge is comprised of four congregations: Peter's Road, Caledonia, Murray Harbour North, and Murray Harbour South. In 1985, the Charge issued a call to Rev. Matheson. She accepted the call and was inducted as their Minister.
9. In 1986, Reverend Matheson began receiving anonymous mail that focused on her gender, expressing opposition to the ordination of women in the Presbyterian Church. The letters further alleged that she was having sexual relationships with a female student minister, and that she was sexually abusing the children who were members of the Gaelic girls choir. Also in 1986, Elmer MacPherson, Chairman of the Manse Committee, began to stalk Reverend Matheson.
10. In 1988, the PEI Presbytery established a church commission to look into the anonymous letters, the stalking issue, and other matters within the Charge. In 1990, the Caledonia Commission, as it was called, completed its work and Presbytery duly passed a motion exonerating Reverend Matheson of any wrongdoing. In 1991, Elmer MacPherson was convicted in Provincial court of criminally harassing Reverend Matheson
11. There were a number of visitation committees appointed between 1991 and 1996 to investigate matters within Reverend Matheson's Charge. In June of 1996, the

Presbytery appointed a visitation committee to the Charge and, as a result, the Presbytery suspended Reverend Matheson from her pastoral duties.

12. Later in 1996, a Commission of the 123rd General Assembly of the Presbyterian Church in Canada directed the Presbytery of P.E.I. to sever the pastoral tie between Reverend Matheson and the Murray Harbour North Pastoral Charge effective December 31, 1996. Rev. Matheson has not worked as a minister since that time because she has not complied with conditions for the release of her license.

BACKGROUND ON STRUCTURE OF PRESBYTERY

13. The Presbyterian Church in Canada is governed by 'courts', presided over by ministers, referred to as moderators. The local church leadership is referred to as the Session. The Session has regular meetings, votes, and keeps minutes of their proceedings. Rev. Matheson presided over the Murray Harbour North Charge Session as Moderator, while a group of Elders from each of the four churches that comprised the Charge assisted in management decisions.
14. While the Congregation has a great deal of autonomy over its financial concerns and it is responsible for its own affairs, the Presbytery exercises oversight and supervision of the Charge. A Congregation may request assistance from a presbytery and the presbytery may address any local concerns through a special commission appointed by it, or through a regular visitation to the local Charge.
15. Presbytery is made up of a Session moderator and an elder, who represent each Charge in the Province. A moderator presides over Presbytery, and is appointed from among elders or moderators of Charges. The Presbytery of PEI is a financially autonomous body that may seek direction from higher courts, namely, the Synod, made up of representatives of Atlantic presbyteries, and the General Assembly, comprised of representatives of presbyteries from across Canada. Rev. Matheson, in her disputes with the church, appealed first to Presbytery, then to the Atlantic Synod and, finally, to the General Assembly, which appointed a commission to deal with her appeals.

COMPLAINANT'S EVIDENCE

Witness: Rev. Susan Lawson

16. Rev. Susan Lawson served in the active ministry of the Presbyterian Church from 1978 to 1998. She testified that her involvement with Rev. Matheson was only as a member of Presbytery during Rev. Matheson's appointment and call to Murray Harbour North Charge.
17. Rev. Lawson was the first female minister to serve in the Atlantic Synod following her appointment to the Brookfield Pastoral Charge by the Board of World Missions in 1978. At that time, the Charge was comprised of Hunter River, Brookfield, Hartsville and Glasgow Road churches.
18. Upon her arrival in the Brookfield Charge, Rev. Lawson said she found opposition to her appointment. A commission appointed by Presbytery dealt with the issues of her ministry in the Brookfield Charge but did not find any problems. Rev. Lawson testified that the Hartsville church withdrew from the Charge because it found her theology to be too liberal. However, she would not elaborate on this during her testimony. Rev. Lawson stated that she decided to leave the Brookfield Charge after three years. Eventually, she became associate minister at the Kirk of St. James Church, however, she left that church in May 1996. There was no offer made to her to become the full-time minister.
19. Rev. Lawson testified as to the structure of the four levels of the church and *The Book of Forms*. She advised the "Book of Forms" outlines the procedures of the church and said there were no instances where these procedures can be changed or altered without amendment by the General Assembly.
20. Rev. Lawson testified about the ordination of female ministers within the Presbyterian church. It was Rev. Lawson's view that the "Freedom of Conscience" policy allowed church members and ministers to have their own opinion on the ordination of women. However, she said they had to accept that the church allowed women to be trained and ordained to the ministry as of 1966.
21. Rev. Lawson did not testify that she was treated differently because of her gender. However, she said she felt she was treated differently by Presbytery on a personal basis, but not on a procedural basis.

Witness: Rev. Kathy Brownlee

22. Rev. Brownlee testified by telephone from Mississauga, Ontario, where she is currently a practicing minister. She was interim minister of the Summerside Presbyterian Church between 1983 and 1984, however, she testified that she did not accept a full time position there because of her experiences with the church during that year. She said that she knew both Rev. Matheson and Rev. Lawson.
23. Rev. Brownlee told the Panel that Rev. John Cameron and his wife made a visit to her at the Summerside Manse early in her year there. She stated she felt that her integrity was being questioned by the visit. Rev. Brownlee testified that Rev. Cameron was not in favor of her staying in Summerside and she said she was accused of creating problems by complaining about the state of the manse.
24. Rev. Brownlee agreed that she inherited problems when she accepted the appointment to Summerside. She tried to resolve some of the issues, however, she was concerned about making the minister look bad. On the other hand, she testified that she felt she would be blamed if the problems were not resolved. She said she felt that it was a no win situation for her and testified that she felt like a scapegoat.
25. When there was a vacancy at St. James in Charlottetown in 2002, Rev. Brownlee was interviewed. She testified that references to the male gender were used extensively during her interview. Further, it was her testimony that she believed the Hartsville congregation left the Brookfield Charge because of Rev. Lawson's gender.

Witness: Rev. Adam Lees

26. Rev. Adam Lees testified by telephone from his home in Nova Scotia. He is a retired minister who served in Montague from November 1988 until November 2000, when Presbytery severed his pastoral tie.
27. Rev. Lees indicated that he was very supportive of Rev. Matheson. He testified about discovering a problem with the furnace in the manse and reporting it immediately to the Charge. It was his testimony that the members of the Murray Harbour North Charge turned against him when he found and reported the furnace problem. He testified that he received a telephone call from the church's national office regarding his attempts to resolve the furnace issue.
28. The visitations by Presbytery to Murray Harbour North Charge were made, in Rev. Lees opinion, to get rid of Rev. Matheson. As a result, he appealed Presbytery's

decision to Synod but the appeal was denied. Rev. Lees indicated his appeals to Synod and General Assembly related to the harassment he felt Rev. Matheson endured from Presbytery and its members. On cross examination, Rev. Lees felt he was considered by Presbytery to be an outsider who would not play church politics. It was his conclusion that Rev. Matheson was viewed in the same way.

29. Rev. Lees described what he perceived as procedural problems in the Presbytery's handling of Rev. Matheson's appeals. He indicated that *The Book of Forms* requires complaints of congregation members be signed and it is not open to interpretation. He stated that Presbytery was acting on anonymous letters and, therefore, the church was not following its laws and practices when dealing with Rev. Matheson.

Witness: Reverend Gael Matheson

30. Rev. Gael Matheson graduated from the Presbyterian College in Montreal in the Spring of 1983. At that time, the practice of the Presbyterian Church was for the Board of World Missions to appoint graduates to a Charge for two years. Rev. Matheson was notified in April 1983 of her appointment to the Murray Harbor North Pastoral Charge.
31. Rev. Matheson testified about her youth and her early desire to be called to the ministry. She said that she listed Eastern Canada as her preferred location and advised that she was considered for Sackville, NB and University Chaplaincy, however, she was appointed to the Murray Harbor North Pastoral Charge in 1983. Rev. Matheson indicated she was concerned about this appointment as it was known that female clergy were often sent to the "boonies".
32. She explained that Murray Harbour North was a four-point Charge with a large geographical area. She said that compared to a single church appointment, there was a lot more traveling and a more extensive work load.
33. She had a further concern following her June 1983 meeting with Rev. Goodwill MacDougall, General Secretary of the Board of World Missions. Rev. Matheson testified Rev. MacDougall had met with Session members on April 10, 1983, regarding her appointment, however, no minutes were kept. Rev. Matheson advised the Panel that Rev. MacDougall told her there was some opposition to her appointment. However, Rev. Matheson said she found that the opposition was far greater than was indicated to her.
34. She testified she only had three days following notification of her appointment to lodge an appeal of her appointment by the Board of World Missions. She said it was her understanding that if she declined the appointment to Murray Harbour

North Charge, she would have to wait two years for a new appointment. Further, she said she felt obligated to honor her vows of ordination and come to the Charge in spite of the opposition.

35. She testified she accepted a call to the Charge in 1985, after due deliberation and prayer, despite knowing there was still some resistance to her appointment. During her testimony, she discussed her call to the ministry and, more specifically, her call statistics. Rev. Matheson said that 78.4 per cent is a lower than average call percentage and said that 85 per cent would have been a stronger call.
36. Shortly after her arrival, Rev. Matheson testified she experienced problems when she reduced the number of services despite the fact that it had been approved by Session. In addition, she testified that she began to experience problems with the Chair of the Manse Committee, Elmer MacPherson, who was also Chairman of the Board of Managers at the Caledonia Church.
37. Rev. Matheson testified that Elmer MacPherson offered to assist her in many activities. She testified that he continued to contact her, more frequently as time went on, and also made inappropriate approaches to her. In 1986, he began a pattern of stalking Rev. Matheson. She testified that he was Charged and found guilty of criminal harassment in 1991.
38. Rev. Matheson reviewed the matter of manse conditions. The manse appeared to be maintained, clean, and furnished when she arrived. Following her arrival, she stated that she noted some deficiencies and a Manse Committee was appointed. She testified that its activities were 'spasmodic'. The roof required replacement because it leaked, the verandah remained in need of repair for four years, the wiring was not up to standard, and the house swayed when the wind blew. Further, the furnace was found to have holes in its wall. Shortly after she moved into the manse, Rev. Matheson said she began to suffer from headaches. Rev. Matheson testified of suffering from furnace fumes and being hospitalized over 100 times from illness. She testified that, despite any illness, she always arranged for pulpit supply in her absence.
39. Rev. Matheson related that individuals had stayed with her at the manse during her experiences with Elmer MacPherson. Daphne Blaxland, a candidate for ministry, stayed in the Manse in 1985 and Rev. Matheson's mother came from Ontario in 1986. She stated that Miss Blaxland's stay attracted allegations of a lesbian relationship.
40. Rev. Matheson testified that she approached Rev. Cameron, a ministerial colleague, for assistance on the stalking matter. At the same time, she said she started receiving "hate" mail letters from unknown sources. She stated that these

letters contained diatribes against female clergy, the length of her sermons, service times, allegations of sexual contact with children in the Gaelic girls choir, and allegations of a lesbian relationship with Daphne Blaxland. Rev. Matheson told the panel that she arranged for some of these letters to be reviewed by a graphologist in Montreal. The graphologist identified a potential “writer” of these letters but no action was taken by Presbytery to follow up.

41. Based on the graphologist’s report, Rev. Matheson testified that she approached Mrs. Laura Graham to inquire if she was the author of the anonymous letters. When authorship couldn’t be conclusively verified, she testified that a letter of apology was drawn up by the Caledonia Commission for her to sign. In addition, she stated that she was required to make a personal apology to Mrs. Graham in the presence of an elder.
42. The Caledonia Commission accepted the contents of the anonymous letters as untrue but asked her to verbally deny them and then write to the Commission denying the charges. Rev. Matheson said these letters continued for one year before the Commission went to the RCMP. Rev. Matheson stated that she signed a letter denying the lesbian relationship and the molestation of the girls in the Gaelic girls choir because she felt that she had no choice but to sign it.
43. She related that while Elmer MacPherson was found guilty of stalking her, in 1991, some of her elders asked for her resignation and wanted Mr. MacPherson to be allowed back into the church. It is her position that she was shunned by some congregants and colleagues. She felt that asking her to resign did not demonstrate a concern for her well-being.
44. Rev. Matheson testified that she hoped the church Commission would engage the civil arm of the law to do something about stalking, keep her informed of what was happening and provide support, contact the RCMP more, and not request her to resign.
45. Rev. Matheson stated she felt Rev. Cameron didn’t accept her assertion that she never wanted any kind of relationship with Elmer MacPherson. Rev. Matheson requested, through the Commission, that Mr. MacPherson be removed as Chair of the Manse Committee.
46. The witness testified that she was not treated fairly by the Commission because the stalker, Mr. MacPherson, was advised to get counseling while she was told to leave the Province and not return until she had a psychiatric assessment. Rev. Matheson informed the panel that Elmer MacPherson was removed from the

church in 1988. However, he was seen around the manse by elders and congregants as late as the winter of 1990 and she was not advised of this.

47. Rev. Matheson testified on the background on the ordination of women. It was in 1966 that the church accepted the ordination of women but still allowed existing churches and clergy to have “freedom of conscience” on this matter. The ‘Liberty of Conscience’ policy of the church was formulated in 1982 and revoked in 1990, Rev. Matheson testified.
48. Rev. Matheson attributed a number of events to differential treatment based on her gender. She testified that there were issues relating to her pension, and health and tax benefits being in arrears. She advised the Panel that she was kept at the minimum stipend for the thirteen years she was in the Charge. Further, she testified that a sign, with her name listed as minister, was not put in front of two of her four churches until 1994. Rev. Matheson informed the panel that discriminatory comments toward her continued from her appointment in 1983 to her release from the Murray Harbour North Charge in 1996.
49. She testified that other gender-related statements were made, including a congregant calling her the “Whore of Babylon” during the summer of 1983. She said there was also foul language used toward her. She related that there was opposition to Rev. Barbara Wright MacKenzie, a student who was doing pulpit supply in the Peters Road church. Rev. Matheson said that foul language was used toward her as well.
50. Rev. Matheson testified she never served as an Interim Moderator of a vacant Charge during her ministry. She agreed that equality of function and geography were factors in naming an Interim Moderator to a vacant Charge. Rev. Matheson testified that she felt that she had been overlooked in terms of Moderator appointments and she believed this was because of her gender. She testified that she was Moderator of Presbytery in 1992, however, she pointed out this was ‘after the fact’ rather than in the usual basis of seniority rotation.
51. Rev. Matheson indicated she acted as both Moderator and Clerk of Session in Murray Harbour North for a period of time but it was not her choice to do so. She stated that she needed help and she requested it from elders but was refused. During this time, a number of elders absented themselves or resigned and Rev. Matheson believed that it was because of her gender. She testified that there were only a few elders who resigned during her ministry for their own reasons, which were unrelated to her.
52. On cross examination, Rev. Matheson testified that she felt her actions were not the cause of the disarray of her congregations. It was her position that the interference of others, including fellow clergy, was causing her severe problems in her workplace. She said she accepts no responsibility for the strife found within the congregations.

53. During her testimony, Rev. Matheson couldn't explain the animosity that existed toward her and why people might be reluctant to approach her. Her only explanation was that people were reluctant to speak their mind, which resulted in a lack of communication. Rev. Matheson testified that she was not tyrannical and did not neglect youth in her Charge. She said she never gave anyone a reason to fear her.
54. Rev. Matheson agreed that Revs. Fawcett, Fortier, Elford, Dunit, and Lees were male ministers who had their pastoral ties severed. To Rev. Matheson's knowledge no other woman has had her tie severed in the Presbytery of P. E. I.
55. Rev. Matheson testified she was put on leave from her Charge on June 18, 1996, without a reason or formal notice being given. She said that Presbytery took issue with her behavior relating to the appeal to Synod and General Assembly and felt she was about to have a mental breakdown. During the summer of 1996, Rev. Matheson heard rumors she had been placed in the Psychiatric unit at QEH and there were financial improprieties with regard to herself and the Charge.
56. Rev. Matheson testified that it was necessary for her to defend herself. She said she had no alternative but to follow church procedure and filing charges was the only mechanism open to her. She related that Rev. Stanley Self, who convened the Commission to hear her appeals, and Rev. Peter Ruddell, who worked with the Commission, were known to be against the ordination of women. She said that she believed that a gender bias was reflected in the work of the Commission.
57. Rev. Matheson testified that she was preoccupied with *The Book of Forms* because there was no other method of recourse available to her. She felt it was very serious for clergy to go outside the church to civil law and she said that abiding by church law is very important to her. She testified that she used *The Book of Forms* in good faith, however, she felt that Presbytery did not follow it.
58. Rev. Matheson reviewed several incidents which she believed represented action against her based on her gender:
 - a) She testified that Rev. James Hurd, who was a member of the Synod Commission, is known not to favour female clergy;
 - b) Presbytery never recognized her charges and considered them vexatious;
 - c) Kay Blaxland and Mark Buell sought her resignation because of Elmer MacPherson not being allowed to attend church because of the stalking;

- d) Rev. Cameron's comments to her in March 1991 were gender biased. He made comments about her attendance at a meeting of Presbytery in Tyne Valley, while she was supposedly ill. She felt the comment questioned her illness from the furnace in the manse.
 - e) The comment of Raymond Brooks, from the Murray Harbor North Church, about not being in favor of a woman in the first place. This comment was made at a visitation of Presbytery to the Charge in 1996.
59. In preparing her case before the 122nd General Assembly Commission, Rev. Matheson was not permitted to contact any member of the Murray Harbour North Charge. As a result, she was unable to call anyone, as witnesses, before the Commission. Rev. Matheson felt church law was abdicated when papers she filed were not given to the appropriate officials. She testified that her appeal to Synod on discrimination was never delivered to the appropriate officials and she felt she was not given the appropriate documents in a timely manner.
60. Rev. Matheson testified that the General Assembly directed that she have a 'professional assessment' but that this was never undertaken by her. She felt there was no reason provided which would warrant this action. Rev. Matheson indicated that she made several attempts to resolve the discriminatory treatment she was experiencing on the basis of gender but that she did not put it in writing because she expected it to be handled by the Church. Rev. Matheson testified that she didn't file harassment charges prior to 1996 because there wasn't a church anti-discrimination policy in place until June 1996.
61. In relation to allegations of discrimination Rev. Matheson testified that she made an effort to file the necessary information with the 123th General Assembly Commission. However, her efforts were thwarted when her appeal was deemed to be out of time.
62. Rev. Matheson testified that her Record of Employment (ROE) was filed in January 1997 by William Miller, Central Treasurer for the Charge. She said that Presbytery had the authority to transfer her out of the Murray Harbour North Charge to a new Charge, yet she was not offered another position by the church or assisted in locating a new Charge.
63. Rev. Matheson stated that her Ministerial license has been held by Presbytery since 1996. She stated that this means that she fulfil her responsibilities as a Presbyterian minister, nor is she able to transfer to another denomination. She said that she must seek personal assessment and professional development to the satisfaction of Presbytery prior to her license being released.
64. Rev. Matheson testified that Rev. Daphne Blaxland was appointed as an interim

minister for a one year period, in January 1997. In concluding her testimony, Rev. Matheson advised that she agreed that a female minister was appointed immediately after she left. However, she stressed that this was only for a one year period and then a male minister, Rev. Steven Stead, was called in February of 1998.

Witness: Ms. Jo-Anne Callaghan

65. Ms. Callaghan is an employee of Human Resources Canada. She reviewed the Record of Employment of Rev. Matheson and advised that she questioned William Miller as to the reason for issuing the ROE in 1997.

RESPONDENT'S EVIDENCE

Witness: Mr. William Miller

66. Mr. Miller testified that he became treasurer of Murray Harbour North Pastoral Charge in September of 1996. He issued the Record of Employment to Rev. Matheson on January 6, 1997.
67. On January 29, 1997, Mr. Millar testified that Joanne Callaghan, of Human Resources Canada, called him to inquire about why he had used code "M" on Rev. Matheson's ROE. Mr. Miller said that "M" is used for grey areas when employers are reluctant to provide full details. He testified that he completed the ROE to the best of his ability according to the information he was given. He said that he did not tell Ms Callaghan that Rev. Matheson was having personal emotional health related problems. He did not try to keep Rev. Matheson from getting EI benefits.
68. Mr. Miller testified that he had a copy of the directive to Presbytery from the 122nd General Assembly Commission. He said he took the words on the form from page 283 of the Commission Report. He further testified that he had paid a minister's pension payments only in Rev. Matheson's case and that they were not paid in full.
69. Mr. Miller agreed that the church is a corporate body that operates as a non-profit organization. He said that Rev. Matheson did not have the authority to write cheques. When asked about Presbytery minutes that indicated he had stated he would only accept the position of treasurer if Rev. Matheson left, he explained that he had heard from other people about problems between the minister and the congregation. He advised he did not actively seek to have Rev. Matheson dismissed.

Witness: Rev. John Cameron

70. Rev. Cameron chaired the Caledonia Commission. During his testimony, Rev. Cameron discussed who employs a minister. He stated that the local congregation or Charge is the employer. He stated that Presbytery dissolves ties and is responsible for giving permission to congregations when issuing a call.
71. Rev. Cameron testified that Presbytery may convene a visitation to a Charge whenever it wishes to do so. A visitation team usually meets with the minister, with Session and with the board of managers. Finally, the team meets with the congregation. A report is presented to Presbytery.
72. Rev. Cameron described *The Book of Forms* as a summary of Church procedure world-wide. He said it speaks to the law and procedure of the Presbyterian Church. It is important to understand the principles and adapt them to specific situations. It is not static and is revised almost annually. He characterized it as a guide.
73. Rev. Cameron testified that Liberty of Conscience is a concept that those opposed to the ordination of women endorsed. By 1989 it was no longer an option. The Declaratory Act of 1989 means that there is no place within the Presbyterian Church for ministers opposed to the ordination of women.
74. Rev. Cameron testified that he was totally supportive of the ordination of women. He said he would have voted at Presbytery in favor of the ordination of women. He testified that he conducted the induction ceremony for Rev. Matheson because the scheduled minister did not show up. He was called upon 10 minutes before the ceremony to do this.
75. Rev. Cameron testified that he met with Rev. Matheson about Elmer MacPherson. He said that Rev. Matheson wanted Elmer MacPherson removed immediately from the church. She was shocked and angry, and called his conduct sexual and adulterous. Rev. Cameron said she felt this deeply, but he said he suggested it wasn't that serious.
76. Rev. Cameron testified that even though office holders in individual Charges are subject to the governance of Presbytery, he felt that he had no authority to act on the matter of Mr. MacPherson's stalking and sexual harassment when Rev. Matheson first approached him. He said he believed that she wanted it dealt with quietly. He advised that he called a joint meeting during which Elmer MacPherson stated that he felt he had done nothing wrong and Rev. Matheson was not acknowledging what was true. Rev. Cameron testified that tempers were lost and nothing was accomplished by the meeting.

77. Rev. Cameron testified that he persuaded Mr. MacPherson to resign from the Manse committee but he stayed on as the Chairman of the Board of Managers of the Caledonia church. He further testified that Mrs. MacPherson had called Rev. Matheson wanting to know if there was anything emotional between Elmer MacPherson and Rev. Matheson. He also met with Mrs. MacPherson.
78. Rev. Cameron testified that some people said to him that there were times when Rev. Matheson had unconsciously encouraged Elmer MacPherson. They felt she had unwittingly encouraged him.
79. Rev. Cameron acknowledged that it was fourteen months before he moved in Presbytery that the Caledonia Commission be appointed. The Commission had the authority to tell Mr. MacPherson to stay away from the church for one year.
80. Rev. Cameron agreed on cross examination that stalking is sexual harassment, but he said he does not know if the Commission thought about it in those terms at the time.
81. He said that he has difficulty accepting that Rev. Matheson was blameless and believes that she may have contributed to the situation. He further said that there was no evidence of a relationship between Mr. MacPherson and Rev. Matheson. Rev. Cameron also said that the Commission did not prevent Rev. Matheson from using civil law in the matter of the stalking. He said that, because at the time the criminal investigation was going ahead, Commissioners were concerned that such a move would affect the investigation. They arranged for Rev. Matheson to see a lawyer instead.
82. Rev. Cameron also agreed that there was clear discrimination in the letters brought before the Caledonia Commission but they were not interpreted in those terms. He testified that the Caledonia Commission confined their inquiry to the two matters before them; they had no knowledge of the level of antipathy to Rev. Matheson based on her gender, they did not seek access to Session minutes, and they did nothing to explore or ascertain the level of discrimination against Rev. Matheson.
83. Rev. Cameron testified that there was extreme anger in the Murray Harbor North Charge at Rev. Matheson because she had approached Laura Graham about the anonymous letters. He said that Mrs. Graham was held in high esteem. He said he had never experienced such an uncomfortable Session meeting with such angry members. It was his opinion that she (Rev. Matheson) would have to leave. It had nothing to do with her gender; they were offended that Rev. Matheson would make that accusation on her own initiative. Rev. Cameron testified that the Caledonia Commission never suggested that Mr. MacPherson or Mrs. Graham have a psychiatric assessment.

84. He said the Commission strongly encouraged Rev. Matheson to see Rev. Ross Howard for counseling because members were concerned that she was becoming obsessive. Rev. Cameron testified that Rev. Matheson firmly believed that she was in this Charge to deliver the community from the evil that they were unaware of.
85. He testified that when the Caledonia Commission discussed with her whether it would be advisable for her to seek another church she lost confidence in them. Rev. Cameron said that at no time was Rev. Matheson ordered to leave the province and not come back until she had received psychiatric help. Any comment about this was merely a suggestion made out of concern and was an unfortunate term to use. They did not suggest she was mentally ill.
86. Rev. Cameron testified that Rev. Matheson had difficulty with authority. She found it difficult to accept the authority of the church and she had difficulty using her own authority. He said that she had a strong sense of being right, was very direct, demanding and sometimes controlling. People did not consider her to be a good listener and sometimes chose not to engage her in debate.
87. Rev. Cameron said that when the Caledonia Commission met with the Murray Harbour North Charge Session they were dealing with specific issues. In one case, he said there was anger directed towards Rev. Matheson. He said that there was real concern expressed for her and that Session passed a resolution supporting her. As time went on, he said that there was a general deterioration of her relationship with the congregation based on her leadership style. Elders and the treasurer resigned and people went to other churches.
88. Rev. Cameron said that Rev. Matheson made a motion in late 1990 to have the Caledonia Commission dismissed because she had lost confidence in it and felt the Commission was an obstacle. He said she was willing to go to extreme lengths to get her own way. She felt that she could fix things better on her own and that the Caledonia Commission was in her way.
89. Rev. Cameron said that the Commission asked Rev. Matheson to write and sign the letter denying the accusations in the anonymous letters because they wanted it on file for the sake of the record. He did not think it would be offensive to ask Rev. Matheson to write a letter denying the lesbian affair. Members of the Commission did not consider this to be demeaning and Rev. Matheson made no protest at the time.
90. He testified that he cautioned Rev. Matheson about being too hasty. He had no doubt about what she had told him, but she seemed to be impatient and felt the police were not doing their job. She thought they were too slow to act with regard to the stalking. Rev. Cameron met with the police two or three times. He said that

in the spring of 1990 the Caledonia Commission members suggested that time away would be good for Rev. Matheson. He agreed that the use of the term “psychiatrist” was unfortunate. He did not wish to imply that she was ill but rather, she was under stress. Rev. Cameron said that Rev. Matheson thought that seeing a psychiatrist would be a black mark on her record but the Commission did not.

91. Rev. Cameron said that three members of the Caledonia Commission went to court in Georgetown on the day set for Mr. MacPherson’s trial prepared to testify if called. He said they were there to show support for Rev. Matheson.
92. Rev. Cameron testified that he felt the Caledonia Commission did everything possible to deal with the stalking of Rev. Matheson. He said the Commission expelled Mr. MacPherson from church; called in the police; and advised Rev. Matheson against civil action because police were building their case and needed evidence.
93. He voted against the motion exonerating Rev. Matheson because of her approach to Mrs. Graham about the writing of the anonymous letters and the extreme anger expressed by members of the congregation. He testified that he did not blame Rev. Matheson for the harassment and stalking and he did not blame her for the anonymous letters. However, he testified that he was aware of actions undertaken by Rev. Matheson which he felt contributed to the deteriorating relations in the congregation.
94. Rev. Cameron testified that in February 1991, he moved that there be a visitation to the Murray Harbor North Charge because he felt that things had not been resolved. There was carry over from a visit of the RCMP to a Mrs. Glover and increased comments from the Charge about stressful relationships with Rev. Matheson. He knew about the deficiency in stipend, had received word that the treasurer had resigned, learned of the furnace issue and the resulting stress, and heard from Rev. Lees that in his estimation the manse needed extensive renovations. Rev. Cameron said that Presbytery had a responsibility to see that something was done about it.
95. Rev. Matheson appealed the visitation to Presbytery but was unsuccessful. She then appealed to Synod. Rev. Cameron said that the visitation did not go ahead. He testified that all parties agreed to a visitation in January 1993, a verbal report was made to Presbytery in February, and a written report was received in March.
96. Rev. Cameron testified that in March of 1996, another motion was made to have a visitation to Murray Harbor North Charge. He said that Rev. Matheson dissented. He advised the Panel that she appealed the visitation to Synod in May, however, the visitation went ahead anyway. Rev. Cameron testified that during that visitation, people spoke up and asked for help. He testified that he was not present when Raymond Brooks made his statement about not wanting a woman minister. He said that Mr. Brooks was never a member of any of the church courts. His

comment did not have any influence on Presbytery and it was made after Rev. Matheson was placed on leave.

97. When asked if he knew why Rev. Brownlee had felt intimidated by his visit, Rev. Cameron said he was surprised by her comment. He said he did not take exception to her gender and did not try to intimidate her.
98. Rev. Cameron testified that Rev. Matheson's relationships with colleagues were initially positive but as time went on problems emerged; differing views emerged and these caused strong differences and conflict. He defined clerical interference as ministers doing things in another minister's Charge. In later testimony Rev. Cameron expanded on this definition to include action of clergy from elsewhere that cause strife.
99. A common reason for clergy to be dismissed if warranted, said Rev. Cameron, is that the relationship between the minister and the congregation is no longer viable. He stated that this is in addition to the four reasons for dismissal in *The Book of Forms* which are: bad doctrine; scandal; schism; and incompetence.
100. Presbytery has overall authority for the well-being of congregations and therefore has the right to take action. He further said that it is impossible to draw parallels with the business world. Congregations call a minister with permission of Presbytery; congregations support their minister at a level approved by Presbytery; and congregations may ask a minister to leave with the support of Presbytery. A minister cannot come or go without the support of Presbytery.
101. Rev. Cameron said that all of Rev. Matheson's appeals to Synod and the General Assembly were on matters of procedure. He said that the terms of reference for the General Assembly Commission were to deal with all matters arising from the appeal filed by Rev. Matheson. Rev. Cameron testified that he was not in attendance and did not know how they decided that her pastoral tie should be severed.
102. Rev. Cameron testified that Synod minutes do not record how people vote on matters before them. He suggested that there was quite a bit of opposition in eastern Canada to the ordination of women, and there were pockets of resistance within PEI.
103. Rev. Cameron testified that he knew that Rev. Matheson's license was withheld. He said that it has not been released because she has not fulfilled the recommendations to seek personal and professional assessments.
104. He said that Presbytery did nothing to remove Rev. Matheson from the situation. There were times when Session suggested that she remove herself from the manse, times when people stayed with her, times when she went elsewhere. Rev. Cameron testified that the Caledonia Commission discussed the advisability of Rev.

Matheson relocating to another Charge on more than one occasion. At times she seemed favorable, others not. They also suggested that she get away temporarily.

105. In response to the statement in the General Assembly's report about what had gone wrong, Rev. Cameron said that Rev. Matheson's response to the problems in her Charge are partly the reasons she was eventually told to leave. Her style of ministry led to direct and personal confrontation with dissenters and this was what contributed to the overall deterioration of relations with her congregants.
106. Rev. Cameron reaffirmed that he did not know what the General Assembly Commission had before it in 1996 when it considered Rev. Matheson's appeal. He agreed that the harassment and anonymous letters were related to gender, but they took place several years before the General Assembly Commission met. There was no suggestion, he testified, that the General Assembly directed her pastoral tie to be severed because of the sexual harassment, hate mail or illness.

Witness: Mrs. Davida Stewart

107. Mrs. Stewart was Moderator of Presbytery when Rev. Matheson's tie was severed. She testified that she first met Rev. Matheson in the early 1980s at Presbytery meetings. She felt Rev. Matheson was a very private person and hard to approach. In 1988, Mrs. Stewart said, she was named to the Caledonia Commission.
108. Mrs. Stewart agreed that the situation of stalking and anonymous letters were deplorable and stated that she felt that the Caledonia Commission was breaking new ground. She testified about the difficulties involved with the stalking situation because of the stalker being a congregant. She said the Caledonia Commission never sided with Mr. MacPherson, never undermined Rev. Matheson, and did all they could. Mrs. Stewart testified that she appeared in Georgetown court to support Rev. Matheson, not because she was subpoenaed. Mrs. Stewart testified that one of the most difficult things to be done was to tell Mr. MacPherson not to attend.
109. She advised that the Caledonia Commission met with the woman Rev. Matheson had identified as the author of the hate mail and that the hate mail stopped after this visit. Mrs. Stewart advised the Panel that the Commission members also met with the RCMP.

110. Rev. Matheson's health condition was unknown to Mrs. Stewart. She testified that she only became aware of the migraines when Rev. Matheson was hospitalized. Other matters such as stipend arrears, manse condition, church signs, furnace, travel allowance were not looked at by the Commission, Mrs. Stewart testified. They could have been but weren't. Mrs. Stewart testified that she did not know who had made Rev. Matheson's visit to Mrs. Graham about the anonymous letters public. She said that the Caledonia Commission did not inquire into this.
111. She testified that she appreciated the gifts of Rev. Matheson but found her self serving with no recognition of the pain she caused to others. Mrs. Stewart said she found her vengeful, difficult and disruptive of Presbytery. It was Mrs. Stewart's testimony that only after seeing Rev. Matheson under considerable stress did they suggest she talk to Rev. Ross Howard for support.
112. Mrs. Stewart testified that she was Moderator of Presbytery when it held a regularly scheduled meeting in the Murray Harbour North Church. She said that people cannot speak at one of these meetings if they are not on Presbytery, unless they first ask permission. She testified that the court allowed one person from each congregation to speak and gave them a time limit. Rev. Matheson challenged the ruling. Mrs. Stewart said Rev. Matheson advised she would press charges against the Moderator for this.
113. She testified that the Caledonia Commission did not take active steps to find an alternative placement for Rev. Matheson and said that this is not the way that the Presbyterian Church works. She said Rev. Matheson never asked to be moved.

Witness: Rev. Mark Buell

114. Rev. Buell testified that he currently serves as the minister in the Murray Harbour North Pastoral Charge. Rev. Buell stated that Rev. Matheson extended very good pastoral care to his family and that she baptized him into the Presbyterian Church in 1987. Rev. Buell testified that he joined Presbytery in June 1993 but did not entertain the possibility of becoming minister at Murray Harbour North until late 2003 or early 2004.
115. Rev. Buell testified that he knew nothing about the stalking and the letters before he was ordained as an elder in 1988 and joined Session. He said this was a terrible time for Rev. Matheson but she did receive support from individuals
116. In 1993, when he disagreed with Rev. Matheson on a matter, Rev. Buell testified

that it was perceived by her as betrayal. He testified that Rev. Matheson's pastoral tie was severed because she no longer had a viable relationship with her congregants, not because of her gender. He stated that he supports female clergy and had requested that Rev. Matheson preach at his ordination service.

Witness: Rev. Roger MacPhee

117. Rev. MacPhee testified that he became the interim Moderator at Murray Harbour North Charge before Rev. Daphne Blaxland was hired as interim minister. He said that prior to this, he had little contact with Rev. Matheson and knew very little of what was taking place in the Murray Harbor Charge. He testified of knowing very little about the work of the Caledonia Commission because his family was going through a period of illness. Later in his testimony, however, he told the panel that he felt the Commission carried out their mandate with no whitewashing of the issues.
118. He said that the first Session meeting he called, after being appointed Interim Moderator, was held at his church in Belfast. He testified that there had to be someone at the door because the elders were afraid that Rev. Matheson would show up. Rev. MacPhee said there was a tremendous amount of fear and apprehension on the part of the elders. They were still quite protective of Rev. Matheson but at the same time afraid of her.
119. Rev. MacPhee said that he tried to get a handle on the finances of the Murray Harbour North Charge and testified that significant amounts were owed. He acknowledged that Rev. Matheson's stipend was paid up at that time, her pension and health plans premiums were not, nor were the employer/employee remittances paid up to date

Witness: Mrs. Nancy Harvie

120. Nancy Harvie testified that she lived in Bedeque and was an elder in the Summerside Presbyterian Church. She said she was a member of Presbytery from 1990 to 1995.
121. She testified that members of the Summerside congregation were very supportive of Rev. Brownlee. She said that the congregants arranged for her transportation because she was unable to drive due to a visual impairment.
122. Mrs. Harvie said that Presbytery meetings at this time were full of tension and anxiety, and it was Rev. Matheson who was raising issues. However, she testified that she knew nothing of what was taking place in the Murray Harbor Charge or what issues Rev. Matheson was facing.

Witness: Mr. D. R. Morrison

123. As a result of press coverage of the hearing, Mr. Morrison appeared to correct an inaccuracy in Rev. Brownlee's testimony. An individual she identified as being on Session was, in fact, merely an elder. He testified he had high regard for Rev. Brownlee, and that he was not aware that she did not feel welcome in Summerside.

Witness: Mrs. Barbara MacNeill

124. Mrs. MacNeill advised the panel that she has been a member of the Murray Harbour North Pastoral Charge since 1987 and elected as elder in 1995.
125. She testified that things changed "drastically" in 1992. There were rumors of difficulties and financial problems in the Charge. She said that people did not want to volunteer and they stopped attending church. This led to the financial problems. Mrs. MacNeill said she observed that financial concerns were raised by the Caledonia elders at many Session meetings. She said the issue never seemed to be addressed.
126. Mrs. MacNeill testified that she didn't learn about Elmer MacPherson until she read it in the papers and she didn't know about the content of the letters until this hearing.
127. She said that after she disagreed with Rev. Matheson, by supporting Rev. Buell's letter, and brought problems within the Charge to the attention of Presbytery, she was told that she might face excommunication from the church.
128. Mrs. MacNeill testified that she told Presbytery at a December 3, 1996, meeting that the congregation would accept nothing less than Rev. Matheson's removal. Mrs. MacNeill felt she was reacting to the feelings of the members of the Murray Harbour North Pastoral Charge but she had no direct authority to speak on their behalf.

Witness: Rev. Goodwill MacDougall

129. Rev. MacDougall testified by telephone from his home in England. He said that he was born in Belle River PEI and worked in the national offices of the Presbyterian church in Canada until his retirement in 1988. Rev. MacDougall was with the Board of World Mission of the National Church in 1983. It is comprised of Presbyteries and Synods across Canada.
130. He explained the process whereby congregations could, at that time, make application through their Presbytery Mission committee for a graduate minister.

Rev. MacDougall informed the panel that he was not familiar with the Murray Harbor North Charge, however, he knew some of the members because of his Island roots. He came to PEI in April 1983 on church business. He testified that he agreed to conduct two services in the Charge on April 10, 1983. He said that, upon arriving in PEI, he was advised he was to meet with the Session of the Murray Harbour North Charge on Sunday afternoon. He said that he was told that the reason for the meeting was Session members' objection to the appointment of a female minister to the Charge.

131. Rev. MacDougall testified that he met with Session, not the congregation, in a regularly constituted meeting. He said he saw the clerk taking notes but was not sure if they formed formal minutes. It was his position that he went to the meeting to discuss the problem and not dictate a position to Session. Rev. MacDougall felt they had a good discussion and he said Session members changed their minds about a female minister by the end of the meeting. He recalled that a vote was taken, and that two members abstained and the balance voted to accept Rev. Matheson as minister to the Charge.
132. Rev. MacDougall testified he met with Rev. Matheson in Toronto, following his trip, but could not give an exact date of this meeting. He suggests it possibly was during the week of April 13, 1983. He felt Rev. Matheson was upbeat on her appointment to Murray Harbour North Charge. On the other hand, he said he was concerned about whether or not Rev. Matheson had taken in what he told her about the Session meeting in Murray Harbour North Charge.
133. Rev. MacDougall indicated it was two or three weeks after Rev. Matheson had signified her acceptance of the appointment that he found out about concerns about a female minister. This was the only time he had met, face to face, with Rev. Matheson. He testified of being disturbed a little and told her to take her time on the matter and talk to people.
134. Rev. MacDougall testified that students could ask for a review of their appointment. It was in the interest of the church for students and the Charge to be happy on an appointment.
135. Rev. MacDougall testified that Rev. Matheson was an intelligent person and he said he urged her to be cautious and try to win over those who opposed her. He did not return to the Charge prior to his retirement in 1988.
136. Rev. MacDougall testified he felt it would not have been appropriate for him to suggest that Rev. Matheson consider another appointment. There were likely more openings than candidates in any year, he suggested. He never met with Rev. Matheson to know if she had a specific request on a location for appointment.

Witness: Rev. Cynthia Chenard

137. Rev. Chenard testified via telephone from Dartmouth, Nova Scotia. She advised that she was Convener of the Synod Commission in 1996. She said that Rev. Matheson never raised the issue of gender before the Synod. She said she was unaware of the stalking and the hate mail. The Synod Commission dealt only with the visitation and clerical interference, as these were the only matters before it.

Witness: Rev. Bert Van Cook

138. Rev. Van Cook testified by telephone from his home in Ontario. He served in PEI from 1985 to 1998 in Summerside and said he supports the ordination of women.

139. He said he met Rev. Matheson shortly after arriving in PEI. He described her as defensive, controlling, intimidating and legalistic.

140. Rev. Van Cook testified that he was part of the May 1996 visitation to Murray Harbour North. He said that Presbytery has the right to visit a Charge at anytime. When the visitation team arrived, Rev. Van Cook said the church was three quarters full. He said this is unusual, and often means that something is wrong. Rev. Van Cook said that Rev. Matheson was asked to leave the meetings with the Session and the congregation and she refused. He said that he thinks the congregants were intimidated by her presence.

141. Rev. Van Cook testified that two sets of concerns were expressed: the lack of communication within the Charge (it was non-existent) and Rev. Matheson's intimidating, authoritarian style of leadership.

142. The Visitation Committee recommended that Rev. Matheson be given a three month leave of absence with stipend, that an interim Moderator be appointed and that a treasurer be elected. Rev. Van Cook said that the other Charges in the PEI Presbytery agreed to pay pulpit supply in rotation during this period.

143. Rev. Van Cook testified that he had no knowledge of the stalking issue or hate mail experienced by Rev. Matheson. He had never seen a written report from the Caledonia Commission and was never advised of issues which had taken place. In addition, he was not aware there was dissension to a female minister at the time of her appointment to the Murray Harbour North Charge in 1983.

144. Later in 1996, there was another visitation that continued Rev. Matheson's leave for an additional three months. He testified that it was during this visitation that Raymond Brooks made his comment about not wanting a female minister in the first place. Rev. Van Cook said the statement was ignored by the committee.

145. Rev. Van Cook confirmed he made the motion at Presbytery, to sever Rev. Matheson's tie with her Charge on November 22, 1996 and this was done on December 17, 1996.

Witness: Rev. Peter Ruddell

146. Rev. Ruddell testified by telephone from his home in Ontario. He advised he met with Rev. Matheson when the Commission, appointed by the General Assembly to deal with her appeal, met in Charlottetown in October 1996.

147. He said that the specifics of her appeal were that Mrs. Davida Stewart had allowed congregants to speak at the Presbytery meeting in Murray Harbour North Church.

148. Rev. Ruddell said that Rev. Matheson was originally advised by himself that no further evidence could be presented at the hearing. However, when the hearing convened she was advised that she would be given extra time to present her case. He stated that she declined because of time constraints. Rev. Ruddell testified that Rev. Matheson read her presentation from a prepared text. Rev. Ruddell confirmed that the hate mail and the stalking issues were never raised at the hearings nor were they known to the Commissioners. The Panel was informed that the decision of the General Assembly Commission was unanimous and was not made with the intent to finish Rev. Matheson's ministry in the church.

149. Rev. Ruddell testified that the Commission recommended severance of the pastoral tie because the tie was not viable. He said that no one from Presbytery asked that Rev. Matheson's tie be dissolved. He said the Commission was given the mandate, in Part 6 of its Terms of Reference, to meet expeditiously and, after its review, bring the matter to a conclusion in the best interests of all concerned. He said this gave them the latitude to take the action they took.

150. In defense of the Commission's decision Rev. Ruddell felt *The Book of Forms* provided for the Commission to take this action. Rev. Ruddell took time to review *The Book of Forms* and indicated that section 104 gave the Commission the authority to reach this decision. It states in part ". . . or the higher court may, if circumstances appear to require it, waive altogether the merits of the complaint or appeal, and give such a decision in the original cause as is consistent with truth and justice."

151. Rev. Ruddell agreed that Rev. Matheson would not have known that the severance of her tie would be the Commission's judgment. She was before the Commission only on procedural issues.

152. He testified that Rev. Matheson attempted to appeal to the 124th General

Assembly in 1997. He said that her appeal was denied because it was not received by the Clerk before April 1, 1997.

153. Rev. Ruddell testified that Rev. Matheson was offered a financial settlement. He understood that she was offered \$10,000 but refused to accept it.

Witness: Rev. Ian Glass

154. Rev. Glass testified that he was asked by Presbytery to visit the Murray Harbour North Charge in May of 1996 to read an announcement that a visitation would happen. He said the congregants were agitated and worried. He advised that he was told they were afraid that Rev. Matheson would appear and prevent him from making the announcement.
155. He confirmed that Moderators of Presbytery were chosen on a rotation system based on years as members of Presbytery.

Witness: Rev. Elizabeth Forrester

156. Rev. Forrester testified by telephone from British Columbia. She was appointed by the General Assembly in 1996 to the Commission established to deal with Rev. Matheson's appeals. She said that the Session minutes entered by Rev. Matheson demonstrated that there was a tyranny of office in effect. Rev. Forrester called it "abuse" and said it could not be allowed to continue.
157. Rev. Forrester said that had the Commission known about the stalking and the hate mail issues, it might have given them a context to explaining Rev. Matheson's behavior.

Witness: Mrs. Sandra Reynolds

158. Mrs. Reynolds said she was a member of the Charge since before Rev. Matheson came. She testified that she worked well with Rev. Matheson in the beginning but things changed. She advised she felt Rev. Matheson was intimidating and wanted things done her way.

159. It was Mrs. Reynolds' testimony that she heard rumors of the stalking and hate mail that Rev. Matheson endured.

Witness: Mrs. Amelia Campbell

160. Mrs. Campbell is a life-long member of the Presbyterian church. She is an elder and has served at Presbytery.

161. She was and remains very supportive of Rev. Matheson. Her feeling is that there are two Gael Mathesons. She testified that there is Gael the person and Gael the Minister. As a person she was fun but she took her ministry very seriously. She kept up a solemn ministerial look and would not let people get close to her.

162. Mrs. Campbell felt that Rev. Matheson wasn't totally to blame for the problems that were experienced. Things could have been handled differently and in some cases quicker than they were.

Witness: Rev. Barbara Wright-MacKenzie

163. Rev. Wright-MacKenzie is a minister from Lower Montague, PEI. She testified that she provided pulpit supply and typed bulletins for the Murray Harbour North Pastoral Charge early in Rev. Matheson's ministry.

164. During her testimony, Rev. Wright-MacKenzie advised that she did not know who the anonymous letters came from, nor had she seen the letters. She said that she was aware of the stalking incident. On cross examination, she testified that she did not see stalking as discrimination because she felt discrimination was treating someone differently because they weren't as good as you.

165. She testified that she heard Rev. Matheson's submissions at the General Assembly and that she did not make any reference to gender or sex discrimination. She said that she agreed with the decision to sever Rev. Matheson's pastoral tie because she felt it was the only way to save the Charge. It was her testimony that at that point the greatest concern was for the Charge and that Rev. Matheson lost her job because her relationship with the Charge could not be salvaged.

166. She also testified that her ordination was opposed only by Rev. Matheson. She said Rev. Matheson did not object based on a gender issue but rather because of a procedural matter.

Witness: Rev. Geoff Ross

167. Rev. Ross is currently Moderator of Presbytery. He testified and presented some

statistics relating to the number of female clergy presently serving in the Presbytery of PEI.

THE LAW

The P.E.I. Human Rights Act

168. The Tribunal must consider sections 1(d) and 6 of the Prince Edward Island *Human Rights Act* R.S.P.E.I. 1988, Cap. H-12 as amended.

Section 1(d) of the *Act* states that “discrimination” means:

“discrimination in relation to age, colour, creed, ethnic or national origin, family status, physical or mental handicap, political belief, race, religion, sex, sexual orientation, or source of income of any individual or class of individuals”,

Section 6 prohibits discrimination in employment. It states:

6 (1) No person shall refuse to employ or continue to employ any individual on a discriminatory basis or discriminate in any term or condition of employment.

...

*(4) This section does not apply to
(a) a refusal, limitation, specification, or preference based on*

a genuine occupational qualification;

...

14(1)(d) to a refusal, limitation, specification, or preference based on genuine qualification;

(2) The onus of proving that a qualification is a genuine qualification is on the employer or other person asserting that the qualification is a genuine qualification;

BURDEN OF PROOF

169. The Supreme Court of P.E.I. (Appeal Division) identifies the relevant legal principles as follows:

Only rarely is there concrete evidence of discrimination even when the allegation is of direct discrimination as opposed to adverse effect discrimination. As well, the proof of an intent to discriminate is not required because even where an individual has the best of intentions he or she may still be found to have contravened provincial human rights legislation. If the distinction is the proximate cause of the complainant not receiving the same treatment as those who do not share his personal characteristics, a case for discrimination will be made out. Proof is frequently found in circumstantial evidence and the reasonable inferences to be extracted from this evidence.

Ayangma v. French School Board, [2002] PESCAD 5 (para. 36)

170. The Tribunal must assign the initial burden of proof to the complainant according to principles set down by the Supreme Court of Canada:

To begin with, experience has shown that in the resolution of disputes by the employment of the judicial process, the assignment of a burden of proof to one party or the other is an essential element. The burden need not in all cases be heavy—it will vary with particular cases—and it may not apply to one party in all issues in the case; it may shift from one to the other. But as a practical expedient it has been found necessary, in order to ensure a clear result in any judicial proceeding, to have available as a tie-breaker the concept of the onus of proof.

O'Malley v. Simpson Sears, [1986] 2 S.C.R. 536 (at para. 28)

INFERENCE OF DISCRIMINATION

171. The Tribunal may rely on circumstantial evidence to infer discrimination.

There is indeed, virtual unanimity that the usual standard of proof in discrimination cases is the civil standard of preponderance. The appropriate test in matters involving circumstantial evidence, which should be consistent with this standard, may therefore be formulated in this matter: an inference of discrimination may be drawn where the evidence offered in support of it renders such an inference more probable than other inferences or hypotheses.

Proving Discrimination in Canada, Beatrice Vizkelety, (Vancouver: Carswell, 1987)

HEARSAY EVIDENCE

172. During the course of the hearing both parties objected to the admission of hearsay evidence. In accordance with the legislative mandate of the Prince Edward Island Human Rights Commission, and in order to provide both parties with the opportunity to be heard, we gave the maximum amount of latitude.
173. Administrative tribunals may view such evidence in terms of the weight it should be given and not its admissibility: “Hearings Before Administrative Tribunals”, MacAulay & Sprague, (Scarborough: Carswell 1995) at p. 17-2.9. We have also been guided by the principles outlined by Sopinka in *The Law of Evidence in Canada*, 2d ed. (Toronto: Butterworths, 1998) at p. 308:

In proceedings before most administrative tribunals and labour arbitration boards, hearsay evidence is freely admissible and its weight is a matter for the tribunal or board to decide, unless its receipt would amount to a clear denial of natural justice. So long as such hearsay evidence is relevant, it can serve as the basis for the decision, whether or not it is supported by other evidence which would be admissible in a court of law.

174. The *Act*, at s. 28.2(2) states:

...

(2) Evidence may be given before a Human Rights Panel in any manner that the Panel considers appropriate, and the Panel is not bound by the rules of law respecting evidence in civil proceedings.

This section of the Act gives the Panel the authority to accept evidence that would not be admissible under the usual rules of evidence.

175. Finally, we note the following statement on hearsay evidence from *Radek v. Henderson Development (Canada) Ltd. (No. 3)*, (2005), 52 C.H.R.R. D/430, 2005 BCHRT 302:

In the end, the use to which hearsay evidence may be put depends on ensuring that all parties receive a fair hearing and that the Tribunal has reliable evidence before it on which it can make its findings of fact.

ISSUES

176. I. Who was Reverend Matheson's employer?
- II. Did the Respondent discriminate against Rev. Matheson on the basis of sex by its response to the anonymous letters?
- III. Did the Respondent take the appropriate steps to resolve the stalking and sexual harassment and provide a workplace free from discrimination?
- IV. Did the Respondent discriminate against the Complainant on the basis of sex by failing to provide a workplace that was not hostile to female clergy?
- V. Did the Respondent discriminate against the Complainant on the basis of sex when it terminated her employment and suspended her license?

ANALYSIS

I. Who Was Rev. Matheson's Employer?

177. All parties named in this complaint, “the Presbytery of Prince Edward Island and members thereof and the Murray Harbour North Pastoral Charge and members thereof”, are listed as Respondents. However, it is the Panel’s position that not all of the Respondents are Rev. Matheson’s employers.
178. The Murray Harbour North Charge issued Rev. Matheson’s Record of Employment, paid her salary, and was responsible for working with her to ensure that the Charge was properly organized. The Presbytery was clearly identified by the 122nd General Assembly as being the body with the authority to terminate Rev. Matheson’s employment. In its decision, at page 12, the 122nd General Assembly stated:
- “That the Presbytery of Prince Edward Island dissolve the pastoral tie between the Rev. Gael Matheson and the Murray Harbour North Pastoral Charge effective December 31, 1996.”*
179. Upon a review of the evidence presented during the course of this hearing, we conclude that the employer is the Murray Harbour North Pastoral Charge and the Presbytery of Prince Edward Island. We adopt the reasoning in *McEvoy v. The Best of Care Ltd.* (2006), *CHRR Doc 06-401 (N.L. Bd. Inq.)* and determine that the proper Respondent is the employer. As such, the Panel finds that the individual members of these bodies are not proper respondents.
180. It is clear that employers are responsible for all discriminatory acts committed by their employees in the context of their employment: *Robichaud v. Canada (Treasury Board)* (1987), 8 C.H.R.R. D/4326 (S.C.C.) at para. 33944. We also accept that employers can be held responsible for acts of non-employees: *Lateigne v. Sams Sports Bar Ltd.* (1998), *CHRR Doc. 98-134 (B.C.H.R.T.)*. Mr. Elmer MacPherson was a member of the Charge and also served on various committees and as a board member. Based on the case law established above, we find that the Respondent is responsible for the consequences of the acts of Mr. MacPherson. We now turn our minds to the questions of whether or not the proper measures were taken by the Respondent.

II. Did the Respondent discriminate against Rev. Matheson on the basis of sex by its response to the anonymous letters?

181. We adopt the test as outlined in “Sexual Harassment in the Workplace” (3rd) Butterworths, 2000, at page 297. The test states that the Complainant must prove:

a) The employer knew (or should have known) of the harassment

The testimony throughout the hearing supports that the Respondent knew that Rev. Matheson was receiving hate mail. Rev. Adam Lees, Rev. Cameron, and Mrs. Davida Stewart all acknowledged the existence of the letters during their testimony. Sandra Reynolds testified that she had heard rumors about the letters.

Rev. Cameron agreed that there was clear discrimination in the letters brought before the Caledonia Commission, however, he stated that the Commission did not deal with the letters in the context of sexual harassment. Mrs. Davida Stewart discussed the involvement of the Caledonia Commission and the RCMP in relation to the letters. Rev. Lees testified that he had read the letters, and the Respondent was aware that they were of a harassing nature.

b) The employer failed to take reasonable measures to prevent or remedy the harassment

At the time of the letters, there was no sexual harassment policy in place, nor was there a process established for individuals to follow should sexual harassment occur. Following the incident with the letters, the Respondent did not conduct any education or prevention training on the issue. The Panel finds that while the Respondent did take certain actions after being made aware of the harassing letters, the steps were not taken in a timely fashion nor were they appropriate. The Respondent paid for a graphologist to try to determine the identity of the writer of the letters. However, Rev. Matheson was discouraged from taking further steps to seek out the identity of the letter writer. In addition, the Caledonia Commission required that Rev. Matheson write a letter for the church records denying the lesbian relationship and sexual impropriety with the members of the Gaelic girls choir.

The panel heard testimony relating to the fact that the Respondent was not pleased

about church issues being made public. The Respondent's evidence indicated that Rev. Matheson wanted the letter issue to be kept quiet. This may be the case, however, it is not an excuse for inaction. We are not satisfied from the evidence that the Respondent acted quickly in order to deal with the harassment of Rev. Matheson. We accept Rev. Matheson's evidence that it took over a year for the police to be contacted, as this is supported by the testimony of Rev. Cameron.

We accept the evidence of Rev. Matheson that it was she who took the step of having the letters analyzed by a graphologist in hopes of identifying the author. Further, we also accept her evidence that the Respondent did not take any further action when a potential author, Mrs. Laura Graham, was identified and that Rev. Matheson was left to approach her. More telling is the fact that the Respondent bowed to pressure from members of the Charge and required that Rev. Matheson write a letter of apology to Mrs. Graham, despite indications that there was a strong probability that she was the author of the letters. Rev. Cameron testified about the extreme anger of the members of the Charge, yet there is no evidence that the Respondent did anything to diffuse the situation.

While the Caledonia Commission accepted that the content of the letters was untrue, it nonetheless took the step of requiring that Rev. Matheson verbally deny the allegations contained in the letters. Further, the Caledonia Commission also required that Rev. Matheson write a letter, for the record, denying the content of the letters. The Respondent should have acted immediately to support Rev. Matheson, however, the evidence indicates that the Respondent placed the needs of the congregants above those of the victim of the harassment. Further, the Respondent appeared to be more concerned about having the proper documentation on file, rather than supporting Rev. Matheson.

The Panel notes that s. 12(2) of the *Act* provides for freedom of speech:

...

s. 12(2) Nothing in this section shall be deemed to interfere with the free expression of opinion upon any subject in speech or in writing.

Therefore, we accept that while the congregants could individually say what they wanted about the ordination of women, in law, the employer has to ensure that the workplace is free from discrimination. This means that when the Charge or Presbytery are acting as employers, they have a duty not to discriminate and a duty to take appropriate action when they become aware of discrimination.

In the end, we accept Rev. Matheson's evidence that even after the anonymous

letters ceased, she was not provided with a safe and harassment-free workplace. It may not have been the Respondent's intention to neglect the needs of Rev. Matheson, however, proof of intent to discriminate is not required: "...because even where an individual has the best of intentions he or she may still be found to have contravened provincial human rights legislation." *Ayangma v. French School Board (supra)* (para. 36).

c) The harassment affected the employee's term or condition of employment because it was sufficiently pervasive and served to create an offensive working environment.

It is obvious to the Panel that what Rev. Matheson experienced in the Charge amounted to an offensive working environment. The anonymous letters expressed discrimination. When she attempted to find the author of the harassing letters, despite being advised not to take any action, she faced animosity from the members of the Charge for having done so.

The Respondent's failure to properly address and resolve the issue of the anonymous letters resulted in adverse consequences for Rev. Matheson. She suffered from alienation by her congregations and lacked the support of Presbytery. The lack of support from the congregations led to financial problems because people were not attending church and making their usual donations.

182. The Respondent has a duty to the Complainant to provide her with a workplace that is free from harassment: *Janzen v. Platy Enterprises Ltd. (supra)*; *Wall v. University of Waterloo (1995)*, 27 C.H.R.R. D/44. The evidence presented during the course of the hearing indicates that the Respondent failed to discharge this duty.
183. Rev. Matheson received anonymous letters which targeted her gender by making allegations of a lesbian relationship with a student minister and of the sexual assault of young girls in the Gaelic girls choir. The Panel finds that these letters were a form of sexual harassment, as per Chief Justice Dickson in *Janzen v. Platy Enterprises Ltd. (1989)*, 10 C.H.R.R. D/6205 at paragraph 56:

Without seeking to provide an exhaustive definition of the term, I am of the view that sexual harassment in the workplace may be broadly defined as unwelcome conduct of a sexual nature that detrimentally affects the work environment or leads to adverse job-related consequences for the victims of harassment.

III. Did the Respondent take the appropriate steps to resolve the stalking and sexual harassment and provide a workplace free from discrimination?

184. The Supreme Court of Canada in *Janzen (ibid)* has defined sexual harassment as unwelcome conduct of a sexual nature, which negatively impacts the victim's work environment. Again, we adopt the test outlined in "*Sexual Harassment in the Workplace*" (*supra*):

a) The employer knew (or should have known) of the harassment

Elmer MacPherson harassed Rev. Matheson on the basis of her gender, starting in 1987 and continuing until his conviction under the *Criminal Code of Canada* in 1991. There is clear evidence that many people in the Charge knew of his actions. Rev. Cameron acknowledged that he first became involved with the stalking situation in January 1987, when he was approached by Rev. Matheson. At this time, Rev. Cameron claimed that he had no authority to act. More than one year passed before the Caledonia Commission was appointed. Rev. Matheson testified that she requested through the Caledonia Commission that Mr. MacPherson be removed from positions of authority in April 1987. Rev. Cameron's testimony confirmed the evidence of Rev. Matheson. Rev. Cameron was a prominent member of Presbytery, the employer thus earlier action was available.

Rev. Cameron agreed that stalking was sexual harassment but he qualified this by stating that he did not know if the Respondent thought of it in those terms at the time.

b) The employer failed to take reasonable measures to prevent or remedy the harassment

The Respondent appeared to have good intentions regarding the remedying of the stalking, however, the steps taken were not appropriate and, as a result, the situation deteriorated until it irredeemably affected Rev. Matheson's employment.

Most striking is the amount of time it took for a properly authorized Commission (the Caledonia Commission) to be appointed. Rev. Cameron confirmed in his testimony that it was fourteen months before he moved in Presbytery that the Commission be appointed.

The other troubling aspect of the stalking incident is the evidence of Rev. Cameron which placed blame on Rev. Matheson as the victim. During his testimony, he spoke of members advising him that there were times when Rev. Matheson had unconsciously encouraged Elmer MacPherson. He also testified that he himself had difficulty accepting that Rev. Matheson was blameless and believed that she may have contributed to the situation. It is obvious from this evidence that Rev. Matheson wasn't being provided with the support that she needed.

Rev. Cameron testified that the Caledonia Commission did everything possible to deal with the stalking incident. He said the Commission expelled Mr. MacPherson from the church; called in the police; and advised Rev. Matheson against taking civil action because it would be best to let the police build their case. Nevertheless, the Respondent failed in its duty to Rev. Matheson because of the length of time that elapsed before the matter was even looked into.

The Respondent did not offer appropriate assistance to Rev. Matheson to help her deal with the experience of being sexually harassed. A failure of nuanced and appropriate advice is evident in the Commission's recommendation that she receive psychological counseling. Mrs. Davida Stewart testified that the Caledonia Commission did not take active steps to find an alternative placement for Rev. Matheson because this is not the way the Presbyterian Church works. The evidence was that they left the decision up to Rev. Matheson. A review of the evidence indicates that there were suggestions that Rev. Matheson seek another Charge, however, the Respondent did not actively seek to find another placement for her. In *Lanteigne v. Sam's Sports Bar Ltd. (supra)*, the tribunal stated: "Regardless, whether options were or were not provided to the Complainant, it is inappropriate to leave the decision of what to do solely up to the victimized employee." The Respondent had a duty to Rev. Matheson and should have sought out alternative placements for her. It is immaterial whether or not Rev. Matheson would have been willing to accept a new placement because one was never offered to her. Further, the evidence offered by Rev. Cameron indicated that the Respondent made a suggestion to Rev. Matheson that she look for another church. As confirmed in *Lanteigne v. Sam's Sports Bar Ltd. (Ibid)*, this is a completely unsatisfactory response on the part of an employer.

The evidence provided by both parties indicates that the Caledonia Commission did not succeed in stopping Mr. MacPherson's harassment prior to the Commission concluding its work in January 1990. Both parties acknowledge that he was banned from church properties, however, the evidence also indicates that he continued to stalk Rev. Matheson.

c) The harassment affected the employee's term or condition of

employment because it was sufficiently pervasive and served to create an offensive working environment.

The Panel finds that Rev. Matheson experienced an offensive working environment. When she sought help for the problems she was experiencing with Mr. MacPherson, she was blamed. She faced additional animosity from the members of the Charge for having accused one of their own community.

The harassing letters and the stalking took place around the same time and Rev. Matheson suffered similar consequences from each. The Respondent failed to fulfil their duty as employer. Rev. Matheson's testimony indicates that Mr. MacPherson offered to assist her with many activities, however, it cannot be said that by accepting his assistance as Chairman of the Manse Committee, she encouraged his attention.

We accept Rev. Matheson's testimony, which indicates that following Elmer MacPherson's criminal conviction in 1991, some elders requested her resignation. The evidence indicates that these same elders wanted Mr. MacPherson to be allowed back to the church.

The Respondent is responsible for providing a safe work environment. The slow reaction to the stalking issue created an additional dangerous situation for Rev. Matheson. The manse furnace was in need of repair and was causing Rev. Matheson to become sick.

A review of the evidence indicates that there was a nearly complete deterioration of the relationship between Rev. Matheson and the members of the Murray Harbour North Charge. Not only was there a lack of support for Rev. Matheson but many members of the Charge viewed her with animosity. The members were not attending church or volunteering their time to help with church business. Consequently, this impacted the finances of the Charge and left Rev. Matheson in a precarious position.

IV. Did the Respondent discriminate against the Complainant on the basis of sex by failing to provide a workplace that was not hostile to female clergy?

185. Rev. Matheson was appointed to the Murray Harbour North Pastoral Charge in April of 1983 by the Board of World Missions. There was evidence presented by Rev. Matheson and Rev. Goodwill MacDougall about his meeting with Session, when the opposition to the appointment of a female minister was discussed. Both parties agree that this meeting was held on or about April 10, 1983. The Panel acknowledges that individuals can believe what they want, however, the employer has a duty to provide a workplace that is not hostile to female clergy.
186. There is a discrepancy in the testimony of Rev. Matheson and Rev. MacDougall about when Rev. MacDougall spoke to Rev. Matheson about the April 10, 1983 meeting. Rev. Matheson testified that the meeting took place in June of 1983. Rev. MacDougall could not give an exact date, however, he suggested that it may have been during the week of April 13, 1983.
187. Where there are discrepancies between their testimony, the Panel prefers the evidence of Rev. Matheson. Both the time of Rev. Matheson's appointment and a meeting which revealed that she may not be welcome in her new place of employment would have been significant events in her life. As such, the Panel concludes that it is likely that her recollection of the timeline of the events is more accurate.
188. Rev. MacDougall testified that a half hour discussion was sufficient to persuade those in the Murray Harbour North Charge that their negative views regarding the appointment of a female minister were incorrect and ill founded. However, there is clearly evidence, based on the numbers reflected in Rev. Matheson's call, that members of the Charge continued to remain closed to the idea of a female minister.
189. There is little doubt that, historically, the Presbyterian Church has struggled with the issue of the appointment of female ministers. Rev. Cameron acknowledged that there was quite a bit of opposition in Eastern Canada to the ordination of women and more particularly, there were pockets of resistance within PEI.
190. The testimony of Rev. Susan Lawson and Rev. Cynthia Chenard referred to this problem. The panel acknowledges that the problems encountered by both of these female ministers were described as theological differences, however we

draw the inference that the theological difference being referred to was the opposition to females in the ministry. We accept the testimony of Rev. Kathy Brownlee in support of the inference. She testified that the Hartsville congregation left the Brookfield Pastoral Charge because of Rev. Lawson's gender.

191. Rev. Matheson's evidence was that she was treated differently because she was a female minister. There was a certain amount of circumstantial evidence tendered with regard to the issue of gender discrimination, however, we accept that proof of discrimination is often found in circumstantial evidence and the reasonable inferences that may be drawn from this evidence: *Ayangma v. French School Board (supra)*. We draw the inference that the following incidents are indications of how Rev. Matheson was treated differently because of her gender:
- a) The attitude of certain members of the Charge when Rev. Matheson requested that repairs be done to the manse and particularly to the furnace, which was causing her to fall ill;
 - b) Repairs were approved immediately when a male minister, Rev. Steven Stead, was appointed to the Charge;
 - c) Church signs were not changed upon Rev. Matheson's appointment;
 - d) Rev. Steven Stead was the permanent successor to Rev. Matheson. His work load was reduced as compared to Rev. Matheson's, however, his stipend was the same.
192. Finally, the Panel takes note of the testimony of Elizabeth Forrester. She was a member of the Commission appointed to deal with Rev. Matheson's appeals. Her evidence was that had the Commission known about the stalking and the hate mail, it might have given them a context for Rev. Matheson's behavior. The Charge and the Presbytery should have put the harassment issues before the national Commission because its failure to do so affected Rev. Matheson's employment.

V. Did the Respondent discriminate against Rev. Matheson on the basis of sex when it terminated her employment and suspended her license?

193. The Respondent alleges that it terminated Rev. Matheson's employment, by severing her pastoral tie, because the pastoral relationship was no longer viable. Rev. Cameron testified that there was a general deterioration of her relationship with the congregations. He said this was because of her leadership style. However, he also gave testimony which indicated that Rev. Matheson's relationships with her colleagues and congregations were initially positive.
194. Rev. Cameron's evidence was that in the years following her call, her style of ministry led to direct and personal confrontations with members. He testified that there was no suggestion that the General Assembly directed Rev. Matheson's pastoral tie to be severed because of the sexual harassment or anonymous letters.
195. The Panel accepts that there was a deterioration of the pastoral relationship, however, it prefers to draw a different conclusion from the evidence as to why this occurred. We accept the evidence that the sexual harassment of Rev. Matheson and the inaction on the part of the Respondent derailed her employment. The failure on the part of the Respondent to deal with the harassment resulted in ongoing discrimination. Therefore, the pastoral relationship would not have deteriorated but for the continuing discriminatory treatment of Rev. Matheson.
196. While the Presbytery followed directives one through seven of the General Assembly Commission, it failed to follow directive number eight. This directed Presbytery to appoint a pastoral support group for Rev. Matheson or seek the appointment of such a group by the Synod of the Atlantic Provinces.
197. The Panel accepts the uncontradicted evidence that several male ministers had their pastoral ties severed. However, it notes that there is no evidence that the male ministers had their licenses suspended by Presbytery.

DECISION

198. Discrimination is defined in *Andrews v. Law Society of British Columbia*

(1989), 56 D.L.R. (4th) 1 (S.C.C.) as a:

“... distinction, whether intentional or not but 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”.

199. In *O’Malley v. Simpson-Sears (supra)*, MacIntyre J. states the requirements of a *prima facie* case as follows:

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 any answer from the Respondent/employer. (At para. 28)

200. Having reviewed all of the evidence before the Panel, we conclude that Rev. Matheson has established a *prima facie* case. The evidence provided by Rev. Matheson covers the allegations made and is sufficient to justify a finding of discrimination in the absence of an answer from the Respondent.
201. After the complainant has established a *prima facie* case, the evidential burden shifts to the Respondent to provide an explanation that is reasonable: *Israeli v. Canadian Human Rights Commission* (1983), 4 C.H.R.R. D/1617. Upon a review of the evidence presented during this hearing, the Panel is unable to conclude that the Respondent discharged this burden. The Respondent did not take the appropriate steps to deal with the harassment relating to the anonymous letters or the stalking. In addition, the Respondent placed the blame for the incidents and the deterioration of the pastoral relationship on Rev. Matheson.
202. The Panel does not find persuasive the Respondent’s suggestion that the animosity faced by Rev. Matheson, which ultimately resulted in her termination, was caused by her style of ministry. The evidence demonstrated that the anonymous letters and the stalking, exacerbated by the Respondent’s lack of action or appropriate

action, contributed significantly to the deterioration of the relationship between Rev. Matheson and her Charge. Rev. Matheson's employment was derailed and the consequences flowing from this resulted in her finally being removed from the Charge in 1996.

203. Rev. Matheson will have made her case if the evidence demonstrates that discrimination is one of the reasons her pastoral tie was severed and her license suspended: *McAvinn v. Strait Crossing Bridge Ltd. (No.4)* (2001), 41 CHRR D/38 (Canadian Human Rights Tribunal). The Panel finds that Rev. Matheson was subjected to a difference of treatment on the basis of gender. The parties agreed that if, after the hearing, the Panel determined that the Complainant had proven discrimination, damages and costs would be addressed at a separate hearing. We direct the Panel Clerk to contact the parties to schedule a date for a hearing on these issues.
204. Finally, counsel for the Complainant raised the issue of amending the complaint to add the ground of mental disability. The Panel requested that each party address this in their final submissions.
205. We have reviewed the submissions of the parties and the evidence presented during the hearing. There was no evidentiary foundation laid to indicate that the Complainant had a mental disability and, as such, the Panel declines to amend the complaint.
206. The Panel finds that the amendment might have been more appropriately framed as a perceived disability. However, perceived disability was never placed squarely before the Panel and, as such, we are unable to make a ruling on that basis.

Dated this 22nd day of August, 2006

Signed: Ann Sherman

Ann Sherman, Panel Chair

Signed: J. A. Nicholson

Anne Nicholson, Member

207. I agree with the reasons of my colleagues, except that I would have allowed the Complainant's request to amend the complaint by adding the ground of mental disability. It is clear that the Respondents believed that Rev. Matheson was in need of psychological counselling or assessment and that her license was withheld on that basis. This shows a difference of treatment in employment on the ground of mental disability.

Signed: Richard W. Montigny

Richard W. Montigny, Member

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