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Indexed as: Eadie and Thomas v. Riverbend Bed and Breakfast and others (No. 2),
2012 BCHRT 247

IN THE MATTER OF THE *HUMAN RIGHTS CODE*
R.S.B.C. 1996, c. 210 (as amended)

AND IN THE MATTER of a complaint before
the British Columbia Human Rights Tribunal

B E T W E E N:

Shaun Eadie and Brian Thomas

COMPLAINANTS

A N D:

Riverbend Bed and Breakfast and Susan Molnar and Les Molnar

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:	Enid Marion
Counsel for the Complainants:	Devyn Cousineau
Counsel for the Respondents:	Ron Smith, Q.C.
Dates of Hearing:	October 17-18, 2011

COMPLAINT

[1] Shaun Eadie and Brian Thomas (collectively the “Complainants”) filed a complaint alleging that the Riverbend Bed and Breakfast (“Riverbend”), and Susan Molnar and Les Molnar (the “Molnars”) (collectively the “Respondents”), discriminated against them, based on their sexual orientation, in the provision of a service customarily available to the public, contrary to s. 8 of the *Human Rights Code*. Specifically, they say that once the Respondents learned that they were a gay couple, their reservation for a room at the Riverbend, which is owned and operated by the Molnars, was cancelled.

[2] The Respondents deny any discriminatory conduct. They say that they have a constitutionally protected right to freedom of religion, and that the cancellation of the reservation was justified on this basis.

[3] The Tribunal had originally ordered that the hearing proceedings could be recorded by the parties. However, at the commencement of the hearing, the parties informed the Tribunal that they had decided not to record the proceedings.

[4] The Respondents also advised the Tribunal during the processing of this complaint that they intended to raise a constitutional argument. They served the appropriate notices on the Attorneys General of British Columbia and Canada, neither of whom participated in the hearing.

[5] I advised the parties that, pursuant to the s. 45 of the *Administrative Tribunal Act* (“ATA”), the Tribunal does not have jurisdiction over constitutional questions relating to the *Canadian Charter of Rights and Freedoms*. While it will apply s. 8 of the *Code* in light of the normal principles of statutory interpretation respecting human rights legislation, and in a manner that may be informed by *Charter* values, any decision respecting whether s. 8 of the *Code* conflicts with ss. 2 and 15 of the *Charter* is a matter that must be addressed by a court, if it is to be pursued by the Respondents. I also note that no party argued that s. 45 of the *ATA* was itself unconstitutional.

WITNESSES AND CREDIBILITY

[6] Mr. Thomas, Mr. Eadie, Mrs. Molnar and Mr. Molnar each testified about the events giving rise to this complaint.

[7] There was little dispute over the material facts. Where it has been necessary to do so, I have assessed credibility keeping in mind the comments of the Court of Appeal in *Faryna v. Chorny*, [1952] 2 D.L.R. 354, para. 357, that “the real test of the truth of the story of a witness ... must be its harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions.” I also note that I am entitled to accept some, none, or all of each witness’ testimony.

[8] In general, however, I found the witnesses to be sincere, to endeavour to recall events to the best of their recollection, and to candidly admit any errors in recall of such things as dates.

EVIDENCE

Messrs. Eadie and Thomas

[9] The Complainants describe themselves as gay men who are in a long-standing, committed relationship.

The Molnars

[10] Mr. and Mrs. Molnar are both retired. They have been married for 41 years and have two children. They have lived in Grand Forks for approximately 22 years. They described Grand Forks as a community of approximately 4,000 to 4,500 people. Mrs. Molnar said it had a small town feeling and that she is greeted by name wherever she would go. She believes it is “quite a moral town”. Mr. Molnar testified that it has approximately nine evangelical churches, as well as other churches.

The Molnars’ Faith

[11] Mrs. Molnar described herself as an evangelical Christian and a follower of Jesus Christ and his teachings. She has been a Christian for approximately 36 years. It is her

belief that her life and words are a witness to the Lord and that she must spread the good news that Jesus has come to save people, he is the living God and his words are true.

[12] Mr. Molnar testified that to be a follower of Jesus Christ means to show love and respect to all people, to honour the Lord with all your heart and soul, and to love others as you love yourself. He described evangelical as meaning “sharing the good news of Christ”.

[13] The Molnars are members of the Mennonite Brethren Church (the “Church”). Church membership was described as a step of faith where there is a commitment to support the Church in a direct fashion through such things as financial ministry. Mrs. Molnar noted that she and her husband have been active in the Church in a variety of ways, including greeting, cleaning, hosting bible study groups, serving as home group leaders, tithing, and going on missions. Some of the activities, such as bible studies and home groups, take place in their home. Mr. Molnar testified that when they were group leaders (from 2006-2008), they held groups approximately every third week in their home. Mrs. Molnar testified that the group bible studies in their home were only with guests on one occasion.

[14] The Church has a congregation of approximately 300 persons and, from Mr. Molnar’s perspective, reflects conservative, moral values. Mrs. Molnar testified that the Church teaches that all God’s words are true, authoritative, without contradiction, informative and transformative. It also teaches that their lives are accountable to God.

[15] The Molnars testified that the Church teaches that all sex outside of marriage is a sin, and that marriage is between one man and one woman in a committed relationship. Mrs. Molnar also testified that it was her religious belief that God created male and female persons for the sanctity of marriage, and that reproduction is tied to the building of His church.

[16] Mrs. Molnar testified that her religion also teaches that her home is a gift from God and is to be used for His ministry. She noted that her pastor blessed their home when they purchased it in 2002. The home was to be used for “good works for the Lord” and any activity or behaviour in the home was to be dedicated to the Lord.

[17] Mr. Molnar testified that he believed in the doctrines of the Church and that he believed it was his responsibility not to allow things to occur in his home or place of business that would contradict those moral values.

The Riverbend

[18] The Molnars started renovating their property in 2006 to run a bed and breakfast. Mrs. Molnar recalled that it was again consecrated by their pastor. She explained that they were starting a new endeavour, and wanted the Lord's blessing for protection and as a blessing for everyone who entered.

[19] Mr. Molnar did not recall this blessing, but testified that they often prayed about the Riverbend. He explained that their goal in opening the Riverbend was to share their beautiful home on the river with others. They knew the income would be a blessing, and they tithed on the income. They hoped to eventually make a small profit to supplement their pensions, and perhaps be able to travel south in the winter.

[20] The Molnars also wanted the Riverbend to be a ministry. Mrs. Molnar testified that it was "like an extension of our Christian faith" to offer their home for Christian ministry, though they did not restrict their clientele to Christians. She displayed Christian literature on the lower level for guests to help themselves to, and placed bibles in each bedroom. They hoped to discuss their religious values with guests if the guests were open to such a discussion.

[21] Mrs. Molnar agreed, in cross-examination, that before she opened the Riverbend, she obtained a business license. The business licence granted no special status in relation to the Molnar's religious beliefs. Mr. Molnar testified that the Church had no direct stake in the business, and that they were aware when they started the business that they were required to comply with the laws of British Columbia.

Riverbend Accommodation

[22] The Riverbend opened in 2007. It was generally open from April until Thanksgiving each year. There are four guest bedrooms on two floors. There is an entrance on the lower floor that leads to a patio, from where there is a river view.

[23] Mrs. Molnar testified that the “whole house” was for guests, except that she and her husband have a private bath and bedroom. On the lower floor, there is a kitchen, fridge and lounge area, as well as the Gold and May bedrooms. The upper floor also has a living room that opens onto a deck where guests could sit and look at the river. There is also a kitchen, dining area and the Rose and Swan bedrooms on the upper floor.

[24] Across from the Swan room is the Molnar’s bedroom. Mrs. Molnar testified that they did not use that room while the house was being operated as a bed and breakfast. Rather, they locked its door and slept in a television room down the hall, past the kitchen through cafe doors where there was a bathroom, laundry room and bedroom area, which she described as “really the tv room and futon bed.”

[25] Guests could have breakfast upstairs in the dining area, and usually dined together. Mrs. Molnar described an excellent and enticing breakfast menu.

Advertising the Riverbend

[26] Mrs. Molnar described various forms of advertisement she utilized to promote the Riverbend, including a sandwich sign, brochure, the “Bed and Breakfast Canada” website, and various websites. She testified that the sandwich sign and brochure each had a fish symbol on them which she believed was universally recognized by Christians as indicating they were followers of Christ. She testified that the Riverbend was not exclusively for Christians, but the symbol was an indication of their faith for other Christians so that they might choose to stay there. Mr. Molnar added that they wanted people of all faiths to stay at the Riverbend, but the symbol would identify the Riverbend as a Christian establishment to other Christians.

[27] Mrs. Molnar had wanted to place the fish symbol on the Bed and Breakfast Canada website, but her request was denied. The Chamber of Commerce also did not place the symbol on its site.

Riverbend Guests

[28] Mrs. Molnar testified that there were no policies restricting persons of any faith from staying at the Riverbend. She also did not identify any specific policies regarding who could or could not be a guest at the Riverbend, but stated that they intended “the

Lord's work" in their home and wanted husbands and wives in a committed marriage, and single people as guests. Mr. Molnar also testified that they had no specific policies as to who or who could not be guests in their home, or any policy restricting guests based on their sexual orientation.

[29] Mr. Molnar testified that he and his wife would regularly pray that behaviours would not happen in their home that either they or their Lord might be offended by. He described one incident in which he thought they had rented to a married couple, but then discovered that the individuals were not married. He testified that if they had known ahead of time, they would not have allowed the couple to book the room.

[30] When asked if she would rent to an unmarried couple, Mrs. Molnar said no. She did the majority of booking and testified that through email or phone conversation, if she had not already been told, she would ask questions to elicit whether or not the guests were married. For example, she might ask what the husband's or wife's name was or whether the individual was looking for accommodation for "yourself and your husband/wife."

[31] Mrs. Molnar was also asked whether she would offer a room to two persons of the same gender. She replied that she had accommodation in at least one room that had twin beds, and that she would be able to accommodate such persons in such a room. For example, she had provided a mother and daughter with accommodation in the room with twin beds.

[32] Mr. Molnar testified that they had no policy against having "gays" in their home. He said it "was not brought up ever." He thought it might sound naive, but testified that when two men called up and wanted to share a bed in their "home" without considering their view, they were surprised. He did not remember talking about the issue until after the incident with the Complainants occurred, and then decided that they should have considered their policy prior to getting into the business and determined how to handle situations more delicately than they had done in this case.

The Weekend of June 19

[33] Mrs. Molnar testified that a honeymoon couple had booked the Gold room for the weekend of June 19. The groom was a member of their Church, and the Molnars were good friends with his parents. Mrs. Molnar had been a close friend of the groom's mother prior to her passing, and considered the groom to be like a son to her. When the couple had reserved the Gold room, Mrs. Molnar immediately offered them the entire lower floor for "their privacy and the special occasion."

[34] Mrs. Molnar described arrangements that were made for the couple's friends to come to the Riverbend on the Saturday morning and decorate the area for the couple by doing such things as placing food and flowers in the area.

The Conversation Between Mr. Eadie and Mrs. Molnar

[35] The Complainants decided to travel to Grand Forks from June 19-20 to visit Mr. Eadie's aunt. Mr. Eadie looked on the internet for accommodation and came across the Riverbend. He described the breakfast as looking very appetizing and stated that it was a motivating reason for deciding to stay there.

[36] There was nothing in the internet description of the Riverbend that suggested that it was a Christian bed and breakfast, or that would have led Mr. Eadie to believe that he would not be welcome because of his sexual orientation.

[37] After reviewing the internet description, Mr. Eadie emailed the Riverbend, but did not receive a reply. He then called and spoke with Mrs. Molnar. He originally testified the conversation occurred on June 19, but in cross-examination recalled it took place in the mid-afternoon on June 18.

[38] Mr. Eadie described Mrs. Molnar as pleasant. He mentioned to her that he wanted to reserve the Gold room. She advised him that it was reserved for a wedding party. He recalled some discussion about other available rooms, a quote about rate and the time for breakfast, and they reached agreement that he would reserve the Swan room. Mrs. Molnar did not indicate to him that there were any conditions for staying at the Riverbend, expressed no concerns at taking the reservation, and made no inquiries about his sexual orientation.

[39] Mr. Eadie gave both his name, and Mr. Thomas' name when making the reservation. The call concluded and Mr. Eadie thought he had booked the room.

[40] Mrs. Molnar's recollection of the call was more detailed but, for the most part, consistent with Mr. Eadie's recollection. She recalled receiving a phone call from Mr. Eadie at approximately 3 p.m. on June 18. He requested the Gold room for Friday and Saturday night. She asked his name and he replied "Shaun". She advised him that a honeymoon couple had booked the room and it was not available Saturday. She felt his voice expressed disappointment. She recalled that, at some point, he stated he had been planning a romantic weekend and she decided she wanted to accommodate him if possible. She recalled him asking if he could have the Gold room just for Friday night and she replied no, because there were persons coming early Saturday morning to decorate the area.

[41] Mrs. Molnar recalled that she was then asked whether there were any other rooms available and she said there were two other rooms on the upper level. She asked him if he was on the website as there was a description on it of a room with twin beds and one with a queen bed. He asked if the rooms had a private bathroom, and she advised him that if she closed the room across the hallway, and he paid an additional \$5, they could have a private bath. She quoted him a multiple night rate and believes she told him that she had no idea when breakfast would be, since she was planning a private breakfast for the honeymoon couple and had not yet booked a time. She also obtained an estimated time of arrival from Mr. Eadie and his phone number.

[42] She then recalled saying "you have not told me the name of your wife". She testified that she liked to greet people by their first names, and he replied "Brian." She testified that she has no recollection of any further conversation. She agreed that at the end of her conversation with Mr. Eadie, she had accepted a reservation and booked the Swan room for the Complainants.

[43] Mr. Eadie did not recall Mrs. Molnar asking for the name of his "wife" or any reference to Mr. Thomas being his partner. I accept that Mrs. Molnar asked Mr. Eadie for the name of his wife. Such a question was consistent with her general practice. Nothing turns on whether or she asked this question, however.

[44] I also find that Mr. Eadie reasonably concluded that he had made a reservation at the Riverbend for himself and Mr. Thomas and that, in fact, he had done so.

Conversation Between the Molnars

[45] After her phone call with Mr. Eadie, Mrs. Molnar went outside to where Mr. Molnar was cutting the grass and said that she needed to speak with him. She recalled telling him that she thought she had just booked a room for a gay couple, but that she was confused because of the names, and did not know if she had it correct. She also believes she mentioned to Mr. Molnar that the reservation was for the special honeymoon weekend. Her husband offered to call Mr. Eadie back.

[46] Mr. Molnar recalled that Mrs. Molnar told him that she was concerned because she believed she had just made a reservation for a gay couple for the same weekend that the wedding party was coming in. She was not sure who she had spoken to, and Mr. Molnar offered to call them back.

[47] Mrs. Molnar testified that prior to her husband contacting Mr. Eadie, they did not discuss offering any alternatives to him, and that she did not turn her mind to the impact of the Complainants if their accommodation was denied.

The Conversation Between Mr. Eadie and Mr. Molnar

[48] Approximately five minutes later, after his conversation with Mrs. Molnar, Mr. Eadie received a call from Mr. Molnar. Mr. Eadie recalled that Mr. Molnar stated that he had seen that a reservation had been booked for two men, and then inquired if he could ask Mr. Eadie a personal question. Mr. Eadie said that he could, and Mr. Molnar asked if they were a gay couple. Mr. Eadie replied that they were. Mr. Molnar then said it was not going to work out, at which point Mr. Eadie said “wow” and hung up the phone. Mr. Eadie testified that he found it “quite disturbing.”

[49] Mr. Eadie understood from the inquiry about their sexual orientation and the statement that it was “not going work out” that he and Mr. Thomas were not welcome at the Riverbend. He estimated that the conversation took about two minutes.

[50] Mr. Eadie testified that he hung up because the conversation took him back to his childhood where he had felt like an outcast, and excluded because of his sexual

orientation. He said he was really shocked that it was happening again to him as an adult. He does not recall Mr. Molnar saying that he was sorry. He acknowledged that Mr. Molnar did not yell or call him names, but described his tone as “not exactly pleasant.”

[51] Mr. Molnar recalled that he phoned Mr. Eadie and said “Hello, this is Les Molnar, my wife just took a reservation for a Shaun”. He then asked “Is this Brian.” The reply he received was “No, this is Shaun”. He recalled saying that they had a Christian honeymoon couple in that night and then asking Mr. Eadie if they were a gay couple. The reply was “yes.”

[52] Mr. Molnar testified that he then said “Shaun, I am sorry, I don’t think it is going to work.” He said that this is a phrase that he uses all the time “as a question”, or at least as an implied question. He recalled that Mr. Edie was surprised, said “wow” very loud and hung up the phone. Mr. Molnar was surprised by that, and then realized that Mr. Eadie was angry.

[53] Mr. Molnar testified that he did not intend the “question” to be an end to the conversation, but felt it implied that they would have a further discussion. However, he made no further attempt to speak with Mr. Eadie. He recalls saying to Mrs. Molnar that perhaps he should call Mr. Eadie back, invite him over for breakfast and to talk, but that she said that he sounded angry and they should not aggravate him anymore.

[54] Mr. Molnar also testified that, while part of his concern was that there was a honeymoon couple staying at the bed and breakfast that weekend, he had not spoken to the couple about their views on a gay couple also staying at the Riverbend, and that the issue was about his standards, not those of the honeymoon couple.

[55] Mrs. Molnar heard the conversation since her husband had put the phone on speaker due to a hearing problem. Her recollection was consistent with Mr. Molnar’s recollection. In particular, she recalled him saying that he was sorry.

[56] While I consider it probable that Mr. Molnar said he was sorry, nothing turns on whether or not he used those words. I find that he inquired about whether the Complainants were a gay couple and, upon learning that they were, cancelled their reservation. I do not consider the phrase “this is not going to work out” to reasonably

constitute an invitation to further conversation or to reflect an “implied question”. The phrase is a statement. Had Mr. Molnar intended to discuss the matter further, he would have said so, or acted in a manner consistent with such an intention, such as calling Mr. Eadie back. He did not.

[57] At one point in his evidence, Mr. Molnar testified that after his conversation with Mr. Eadie, he considered the Complainants’ reservation for the Swan room to be “up in the air.” He testified that he did not think it was going to work, but that if they had had the opportunity to discuss their comfort level with the Complainants, and had received assurances that the Complainants were happy to have two rooms and do nothing offensive to their beliefs, then “perhaps” they would have considered that. He acknowledged such a conversation never took place, and then confirmed that they were not prepared to rent the Swan room to the Complainants.

[58] Mr. Molnar also denied that the only reason for refusing the Complainants access to the Swan room was because they were a gay couple. Rather, he testified that he “had not explored all the difficulties with the accommodation” and that further conversation might have resulted in an amicable arrangement. He acknowledged, however, that the only reason he called Mr. Eadie back was to clarify whether the Complainants were a gay couple, that it was against his faith to rent a room with one bed to a same-sex couple and that they “had to come to grips” with that issue when Mr. Eadie made the reservation. He testified that it would have shamed him and his Lord if he had allowed them to share one bed, though he could not speak for other persons in the Church.

[59] Considering this evidence, I find that Mr. Molnar intended to, and did, cancel the Complainants’ reservation. I also find that the reason the reservation was cancelled was because the Complainants were a gay couple.

Alternative Options

[60] Both Mr. and Mrs. Molnar acknowledged that persons of the same sex had stayed in one bedroom with twin beds at the Riverbend on prior occasions. They did not inquire whether they intended to have sexual relations while in the room. Mr. Molnar testified that if the guests checked in as two people travelling together, it was “obvious” that if

they wanted two beds in the room that they were respectful about their beliefs, so they did not inquire about their sexual orientation.

[61] Mr. Molnar testified that they made it known “who we were” and they felt that if the two people were sleeping in two beds, then their consciences were satisfied that they would not be doing anything that offended their Lord. He testified that, “in other words”, they took the travellers at their word. He noted that, in such circumstances, they did not ask to see a marriage licence or ask about sexual orientation.

[62] In regard to the Complainants, Mr. Molnar testified that he would have discussed with them “who we were” and inquired whether they would be comfortable staying in their home. He would have inquired about their relationship and, depending on their response, if he was satisfied that they would have been respectful of “who they were”, then he would have had no problem with them staying in separate rooms in “their home.”

[63] At another point in his evidence, he testified that he had not considered the possibility of the Complainants sharing a room with two beds. He noted that if they had asked for separate rooms, he would not have inquired about their sexual orientation, and that that arrangement would have been appropriate.

[64] He further testified that he has “no issue” with sexual orientation. Rather, his focus is on the individual’s sexual behaviour. He and his wife monitor behaviour in their home that might be objectionable to their beliefs, to their conscience and to their Lord.

[65] Mr. Eadie testified that if, during the conversation, Mr. Molnar had offered to provide separate bedrooms to each of them, he would have refused the offer. He noted that he and Mr. Thomas were a longstanding couple and wanted to sleep in one room. He also disagreed, in cross-examination, that Mr. Molnar had had no opportunity to provide any alternatives for accommodation. He testified that Mr. Molnar could have called him back, but did not do so.

[66] Mr. Thomas also testified that if Mr. Molnar had offered them separate rooms or a room with twin beds, that he would have found that unacceptable. In his view, it would have been the same as asking a person of colour to enter from a separate door. He expressed the view that there seemed to be a “sad presumption” held by the Molnars that

by sleeping in the same bed, sexual activity was going to occur. He manages an apartment building and is of the view that what goes on behind closed doors is not his business, and should not bear on whether or not any person may rent the premises.

[67] I am not persuaded by Mr. Molnar's equivocal and non-committal evidence that he may have offered the Complainants alternate accommodation in twin beds if there had been "further discussion". Nor am I of the view, as will be discussed later in this decision, that the Complainants should have been required to agree to such a condition in order to secure accommodation. I also do not accept the assumption that separate beds in a room implies that no sexual contact will occur, or conversely, that a single bed necessarily implies that sexual contact will occur.

[68] The fact is that the Complainants were not offered any alternate accommodation, and the Molnars took no steps to communicate any offer of alternate accommodation to them.

After the Cancellation

[69] Mr. Thomas was not involved in booking accommodation for the trip to Grand Forks, but he observed Mr. Eadie's reaction after the phone call with Mr. Molnar. He testified that Mr. Eadie informed him that they had just been denied accommodation because they were gay. Mr. Eadie also informed him that Mr. Molnar had asked if they were gay and he had replied yes and that he was then told it would not work and Mr. Eadie hung up.

[70] After the phone call with Mr. Molnar, Mr. Eadie obtained additional internet information about the Riverbend to see if there was any reference to not allowing people who are gay. He found no such restriction in the advertisements. He referred to one which read:

Come and share our spacious comfortable home situated on the scenic Kettle River as your "home away from home". Relax on the deck and watch the river flow by. Enjoy the abundant bird life of resident eagles and blue herons (bring your camera).

[71] In none of the advertisements was there any reference to religion or to sexual orientation.

[72] Mr. Eadie was referred to a Riverbend brochure, and testified that he had not seen any brochure prior to making the reservation. He did see a sign for the Riverbend as they drove through Grand Forks, after the conversation with Mr. Molnar. He acknowledged that the brochure, sign and also the business cards of the Riverbend all have a fish sign on them. However, none of them contain any specific reference to religion or sexual orientation.

[73] Mr. Eadie testified that when he saw the sign with the fish on it, he did not think anything of it and that his reaction would be that it was a reference to fishing.

[74] Mr. Thomas also recalled seeing the sign for the Riverbend as they entered Grand Forks. He thought it was ironic that they were advertising a vacancy after having just denied them accommodation. He recalled seeing the fish, but thought it referred to salmon habitat in the nearby river. He did not equate it with any religious affiliation.

[75] Mr. Thomas testified that if the Riverbend had been advertised as a Christian bed and breakfast, they would not have tried to reserve a room. He stated this was because of a general understanding he had that the Christian community did not “like” gay people and he would presume they would be uncomfortable with him staying there. Mr. Eadie echoed this view.

[76] After the conversation with Mr. Molnar, Mr. Eadie testified that he and Mr. Thomas took steps to find a place to stay. He originally testified that they were already on their way to Grand Forks when they did so, though he later recalled that it was not until the next day that they left for Grand Forks. In any event, with the help of the aunt, they secured a reservation at a motel. The motel was not as conveniently situated to the aunt’s residence as the Riverbend.

Impact of the Call on the Complainants

[77] Each of the Complainants described their personal experience growing up and living as a gay man, and the impact of the cancellation on them.

[78] Mr. Eadie testified that his life has been “a roller coaster”. He described it as being rough, and that being gay “is such a stigma.” He described bullying, but also support from his parents and others in his community. He testified that the incident with

the Riverbend felt like a “slap in the face”, that it made him feel like a second-class citizen again after he had rebuilt his confidence, and that he felt crushed.

[79] Mr. Thomas testified that he was very upset and angry. He described being aware that he was gay from a young age, and fighting bigotry throughout his life. He has been an active participant in the gay community and described being subjected to demeaning and hurtful conduct because of his sexual orientation. He admitted that this has caused him to get angry and emotional.

[80] Mr. Thomas added that growing up gay, he did not expect to ever be able to get married or to participate on a level of equality in society. He described being beaten for being gay, and other difficulties he experienced as he matured. He testified that this was not a life journey he chose, and that it was difficult to feel like he did not belong. He also stated that his experiences made him stronger, and that he is now an advocate for equal rights.

Filing the Complaint

[81] After hearing about the conversation with Mr. Molnar, Mr. Thomas went online and filed a human rights complaint with the Tribunal. He testified that he filed the complaint because he considered what had happened to be an affront to his and his partner’s dignity. He said that he does not “begrudge” people their differences and considers that the world would be a boring place if we were all the same. He believes that diversity creates strength and community and that for a person, couple or business to undermine the “very fabric of what creates a community” is unacceptable to him.

Human Rights Complaint and Impact on Riverbend’s Operations

[82] The Molnars received a copy of the human rights complaint and filed a response on August 25, 2009. They did not operate the Riverbend after the September long weekend that year, and have not operated since that time. Mrs. Molnar described receiving some emails indicating that other complaints might be filed, and testified they did not want to be faced with such a situation. She said that she would have continued to operate the Riverbend had it not been for that situation, but testified that she has no current plans to operate it again.

[83] Mr. Molnar testified they did not stop operating the Riverbend specifically on the basis of the human rights complaint. Rather, it was due to the reaction they received from the public about the complaint. They did not want to operate a business in breach of the *Code*, or risk further liability.

Expenses

[84] The Complainants reside in Vancouver. The hearing of this complaint was originally scheduled for June 9-10, 2010 in Kelowna. The Complainants' lawyer became ill and the hearing was adjourned. However, at that point, the Complainants were in Kelowna and incurred certain travel and accommodation costs, for which they seek reimbursement.

[85] The Complainants also tendered evidence of their hotel and gas costs to attend the hearing in Kelowna. The room rate was high since an additional room was rented for their mother. I have not considered any charge for her in assessing the actual attendance costs.

[86] In addition, Mr. Eadie testified that he lost three days of work in order to travel to and from Kelowna, and attend the hearing. Mr. Thomas also had to miss work to attend the hearing. They submitted evidence of loss of earnings.

LEGAL ARGUMENT AND ANALYSIS

[87] I will start my analysis with a brief review of the parties' respective positions.

[88] The Complainants say that this is a simple case of discrimination under s. 8 of the *Code*, involving two men who were denied accommodation because of their sexual orientation. They say the *Code* is designed to protect against such conduct, and that their right to access accommodation free from discrimination should be assiduously enforced.

[89] The Complainants also say that this is not a case about competing rights, and that there is no free-standing right for the exercise of religious practices which is enforceable by the Respondents against the Complainants. Rather, the Complainants say this case is about the right to be free from discrimination. To the extent that the Respondents' religious beliefs and practice are relevant, the Complainants say it is to determine whether it would impose undue hardship on them to run a business free from

discrimination. In this regard, they acknowledge that *Charter* jurisprudence may be helpful.

[90] The Complainants further note that there is no express exemption under the *Code* for discrimination when it takes place in a bed and breakfast. They do not disagree with the sanctity of one's home, but say this is not a case where the Respondents were compelled to operate a business in their home. Rather, they say that the Molnar's made a voluntary decision to transform their home into a place of business and, in doing so, were aware that they were required to comply with the laws of the Province, including the *Code*. They say that if people are not prepared, or feel in good conscience that they are unable to run their business in accordance with provincial law, then perhaps it is not the business for them.

[91] The Complainants also note that the Molnars renovated their home to run a bed and breakfast, and to provide guests with access to private bathrooms, kitchen and bedroom space. In this respect, they say there is no evidence to differentiate this type of accommodation from that of a motel, hotel or other type of paid accommodation. They say that the fact that a business might take place in an individual's home does not change the *Code's* application to its operation.

[92] The Complainants further say that the *Code* provides some guidance as to when a business may be exempted from the *Code* due to a religious belief. For example, s. 10(2)(a) provides that the prohibition against discrimination in tenancy does not apply if the space is to be occupied by another person who is to share, with the person making the representation, the use of any sleeping, bathroom or cooking facilities in the space. Similarly, s. 41(1) of the *Code* provides that:

If a charitable, philanthropic, educational, fraternal, religious or social organization or corporation that is not operated for profit has as a primary purpose the promotion of the interests and welfare of an identifiable group or class of persons characterized by a physical or mental disability or by a common race, religion, age, sex, marital status, political belief, colour, ancestry or place of origin, that organization or corporation must not be considered to be contravening this Code because it is granting a preference to members of the identifiable group or class of persons.

[93] The Complainants note that neither of these exceptions is applicable in the current case.

[94] On the other hand, the Respondents say that this is a case about competing rights. The Molnars believe that they are accountable to God for the use of their home, that they are required to use their home for purposes which God encourages, and to prevent behaviour which God prohibits (such as sexual intercourse between persons of the same sex). They also say that there is a difference between a business located away from one's home (such as a hotel) and a business inside the home, such as the Riverbend. They say that to rent a single-bed room to a same-sex couple would require them to violate their sincerely-held religious beliefs which prohibits them from permitting behaviour in their home which they believe on religious grounds to be prohibited, including sexual behaviour between persons of the same gender. The Molnars say that they adopted this standard in the good faith belief that this is what God requires of them.

Legal Framework

[95] The complaint alleges discrimination on the basis of sexual orientation, contrary to s. 8 of the *Code*. This section provides:

- (1) A person must not, without a bona fide and reasonable justification,
 - (1) deny to a person or class of persons any accommodation, service or facility customarily available to the public, or
 - (2) discriminate against a person or class of persons regarding any accommodation, service or facility customarily available to the publicbecause of thesexual orientation...of that person or class of persons.

[96] The Complainants bear the burden of establishing a *prima facie* case of discrimination. A *prima facie* case is one which covers the allegations made and which, if believed, is complete and sufficient to justify a verdict in the complainant's favour in the absence of answer from the respondent: *O'Malley v. Simpson-Sears Ltd.*, [1985] 2 S.C.R. 536, (para. 28).

[97] To establish a *prima facie* case, the Complainants must prove that: (1) they are members of a protected group; (2) the Respondents were offering a service customarily available to the public and the Complainants experienced adverse treatment in respect of

that service; and (3) it is reasonable to infer from the evidence that sexual orientation was a factor in the adverse treatment: *Armstrong v. B.C. (Ministry of Health)*, 2010 BCCA 56, para. 21.

[98] It is not necessary that sexual orientation be the sole or primary reason for the adverse treatment, provided that it was at least a factor: *O'Connor v. Town Taxi*, 2000 BCHRT 9, para. 55.

[99] I also note that, pursuant to s. 2 of the *Code*, there is no requirement that there be any intention to discriminate in order for there to be a breach of the *Code*.

[100] If the Complainants prove a *prima facie* complaint of discrimination, the burden will shift to the Respondents to prove a *bona fide* and reasonable justification (“BFRJ”). If they do so, then there is no breach of the *Code*.

[101] In analyzing this case, I have had regard to the purposes of the *Code*, as set out in s. 3:

- (a) to foster a society in British Columbia in which there are no impediments to full and free participation in the economic, social, political and cultural life of British Columbia;
- (b) to promote a climate of understanding and mutual respect where all are equal in dignity and rights;
- (c) to prevent discrimination prohibited by this Code;
- (d) to identify and eliminate persistent patterns of inequality associated with discrimination prohibited by this Code;
- (e) to provide a means of redress for those persons who are discriminated against contrary to this Code.

[102] I have also approached the analysis in a contextual and purposive manner, having particular regard to the purpose of the service in question and the context in which the complaint arose.

[103] I will now turn to a consideration of the *prima facie* test.

Prohibited Ground of Discrimination

[104] There is no dispute that the Complainants are gay and have been in a longstanding, same-sex relationship. The ground of sexual orientation is engaged by this complaint.

Adverse Treatment in the Provision of a Service Customarily Available to the Public

[105] The Riverbend offered bed and breakfast accommodation to the general public. It was widely publicized through a variety of means, without reference to servicing a particular subset of the general public. There was little dispute, and I find, that the Respondents were offering a service customarily available to the public.

[106] The Respondents argued, however, that there was no denial of that service (or adverse treatment) to the Complainants since Mr. Molnar's comment was intended as a question inviting further discussion, which Mr. Eadie abruptly curtailed by hanging up the phone. As noted earlier, I cannot accept this characterization of the conversation. There is no dispute that Mr. Molnar said it was not going to work out. He testified that there was no reservation after the conversation. His words, reasonably construed, conveyed the clear meaning that the Complainants were not welcome at the Riverbend, and that their reservation had been cancelled.

[107] As well, the fact is that Mr. Molnar did not invite Mr. Eadie to participate in any further discussion about the accommodation. For example, he did not commence the conversation with a question inviting discussion, such as "would you be open to discussing some alternate arrangements." He also did not call Mr. Eadie back. Rather, he inquired about the Complainants' sexual orientation and upon receiving confirmation that the Complainants were gay, stated it was not going to work out. The cancellation of the reservation constituted adverse treatment. I will address any further legal significance of Mr. Eadie's conduct in hanging up the phone later in this decision.

Nexus Between the Adverse Treatment and Sexual Orientation

[108] There is a clear nexus between the Complainants' sexual orientation and the denial of accommodation. Their sexual orientation was a factor, if not the sole factor, in the cancellation of their reservation.

[109] In this regard, I am not persuaded by the Respondents' argument that a distinction should be made between sexual orientation and sexual conduct and that, had the Complainants' provided certain assurances that they would not engage in sexual relations, then they may have been provided with accommodation. For the following reasons, I find that such an argument is not supportable on the facts of this case or in law.

[110] First, Mr. Molnar made no inquiry about whether or not the Complainants intended to have sexual relations. It was the fact of their sexual orientation that informed the cancellation decision.

[111] Second, Mr. Molnar was equivocal about whether or not he would allow a gay couple to stay at the Riverbend, even if they agreed not to engage in sexual relations while staying there. I do not accept that it was the "conduct" that the Molnars were focussed on.

[112] Third, and most significantly, in my view, the Supreme Court of Canada has rejected such a line being drawn between sexual orientation and conduct. See, for example, *Egan v. Canada*, [1995] 2 S.C.R. 513, para. 175 and *Trinity Western University v. British Columbia College of Teachers*, [2001] 1 S.C.R. 772, para. 69 (in dissent, but not on this point).

[113] In *Trinity*, Madame Justice L'Heureux-Dubé noted:

...The status/conduct or identity/practice distinction for homosexuals and bisexuals should be soundly rejected, as per Madam Justice Rowles: "Human rights law states that certain practices cannot be separated from identity, such that condemnation of the practice is a condemnation of the person" (para. 228). She added that "the kind of tolerance that is required [by equality] is not so impoverished as to include a general acceptance of all people but condemnation of the traits of certain people" (para. 230). This is not to suggest that engaging in homosexual behaviour automatically defines a person as homosexual or bisexual, but rather is meant to challenge the idea that it is possible to condemn a practice so central to the identity of a protected and vulnerable minority without thereby discriminating against its members and affronting their human dignity and personhood. (para. 69)

[114] The Tribunal has also rejected the argument that a distinction may be made between the sexual behaviour of an individual and their sexual orientation. For example, in *Hayes v. Vancouver Police Department*, 2005 BCHRT 590, the Tribunal stated:

....It is inarguable that the prohibition on discrimination on the basis of sexual orientation includes not only discrimination on the basis that a person is gay or lesbian, for example, but also includes discrimination on the basis that a person, as a result of that orientation, has sex with persons of the same gender. In other words, the ground of sexual orientation is not exclusively status or identity based, but also protects against discrimination on the basis of behaviours engaged in as a result of a person's orientation. If it were otherwise, the prohibition on discrimination on the basis of sexual orientation would offer scant protection indeed. Such an interpretation would prohibit a person being fired for "being" gay, while doing nothing to prohibit a gay man being fired for having sex with his male partner... (para. 22)

[115] The Complainants were denied a service because of their sexual orientation. They have proven a *prima facie* case of discrimination against all Respondents. In respect of the individual respondents, I specifically find that both Mr. and Mrs. Molnar were involved in, and shared responsibility for, the decision to cancel the reservation.

[116] The burden now shifts to the Respondents to prove a BFRJ. If they are unable to do so, the complaint is justified. If they are able to do so, the complaint will be dismissed.

Bona Fide and Reasonable Justification

[117] In *British Columbia (Public Service Employee Relations Commission) v. British Columbia Government and Service Employees' Union*, [1999] 3 S.C.R. 3 ("*Meiorin*"), and *British Columbia (Superintendent of Motor Vehicles) v. British Columbia (Council of Human Rights)*, [1999] 3 S.C.R. 868 ("*Grismer*") the Supreme Court of Canada set out three requirements that a respondent must prove to justify its conduct:

- 1) they adopted a standard for a purpose or goal that is rationally connected to the function being performed;
- 2) they adopted a standard in good faith, in the belief that it is necessary to the fulfillment of the purpose or goal; and
- 3) the standard they adopted is reasonably necessary to accomplish their purpose or goal, in the sense that they cannot accommodate persons

with the characteristics of the claimant without incurring undue hardship (*Grismer*, para. 20).

[118] The Court in *Meiorin* elaborated on the third step of the analysis as follows:

To show that the standard is reasonably necessary, it must be demonstrated that it is impossible to accommodate individual employees sharing the characteristics of the claimant without imposing undue hardship upon the employer. (para. 54)

[119] Since then, the Court has further clarified the application of this branch of the test. In particular, in *Hydro-Québec v. Syndicat des employées de techniques professionnelles et de bureau d'Hydro-Québec, section locale 2000 (SCFP-FTQ)*, 2008 SCC 43, the Court stated that the use of the word “impossible” in *Meiorin* relates to undue hardship, and the question is whether accommodation can be accomplished without undue hardship to the respondents.

Knights of Columbus

[120] Both parties relied on the Tribunal’s decision in *Smith and Chymyshyn v. Knights of Columbus and others*, 2005 BCHRT 544 (“*Knights*”). Therefore, I will briefly review this decision prior to applying the *Meiorin* three-part test to the facts of this case.

[121] *Knights* involved a Catholic Mens’ organization that rented out a hall located near the Parish church, on property owned by the Catholic Church and Archdiocese (para. 2). The Parish priest had the final say about what activities would take place in the hall. Parish Church groups had priority in renting the hall, but the hall was also rented to the general public. The organization’s signage made no reference to any restrictions on the hall’s use.

[122] The complainants in *Knights* were a lesbian couple who rented the hall for their wedding reception. The Respondents subsequently learned that the purpose of the rental was related to a same-sex wedding, which was contrary to the Catholic Church’s teachings. The reservation was cancelled, and the complainants made alternate arrangements for the reception. The complainants acknowledged that, had they known that the hall was operated by a Catholic organization, they would not have rented the premises.

[123] The Tribunal concluded that the complainants had proven a *prima facie* complaint of discrimination. The Tribunal also found that the Knights had breached s. 8 of the *Code* by failing to accommodate the complainants to the point of undue hardship.

[124] In particular, the Tribunal held that:

- a) The standard adopted by the Knights was that they do not rent the hall for purposes that are contrary to their core Catholic beliefs.
- b) The function being performed in renting the hall not only included its rental, but also that the hall could only be rented and/or used for events that would not undermine the Knights' relationship with the Catholic Church.
- c) The standard, given its purpose, was rationally connected to the function.
- d) The standard was adopted in good faith and in the belief that it was reasonably necessary for the fulfillment of the purpose or goal.
- e) Everyone is entitled to hold and manifest their own sincerely held religious beliefs and to declare those beliefs. However, this right is not absolute: see discussions paras. 94-106.
- f) While accepting that the Knights could not be compelled to act in a manner contrary to their core religious belief that same-sex marriages were morally wrong, the Knights did not accommodate the complainants to the point of undue hardship. In particular, they did not consider the effect their actions would have on the complainants and did not take steps that would have recognized the inherent dignity of the complainants and their right to be free from discrimination (paras. 123-124).

[125] The Tribunal adopted a "spectrum analysis" in respect of the third branch of the *Meiorin* test. At one end of the spectrum was a Catholic parish church and at the other end of the spectrum was a commercial space with no religious affiliation (para. 110). The Tribunal concluded that the Knights' hall fell somewhere between those ends of the spectrum:

In the Panel's view, the issue presented in this case lies at neither end of the spectrum, but somewhere along the continuum, requiring a delicate balance. This was a Hall available to the public, regardless of religion; but it was also a Hall that could not be used for an event that was contrary to core Catholic beliefs.

The Panel accepts that a person, with a sincerely held religious belief, cannot be compelled to act in a manner that conflicts with that belief, even

if that act is in the public domain. This conclusion is supported by the Supreme Court of Canada's decision in *Trinity Western* and the Ontario Divisional Court's decision in *Brockie*. The Panel accepts that the Knights are entitled to this constitutional protection and therefore cannot be compelled to act in a manner that is contrary to their core religious beliefs. The Panel also finds that, although the Knights were not being asked to participate in the solemnization of the marriage, renting the Hall for the celebration of the marriage would have required them to indirectly condone the celebration of a same-sex marriage, an act that is contrary to their core religious beliefs. (paras. 112-113).

[126] The Tribunal went on to state that the Knights had to accommodate the complainants by taking steps which did not violate their beliefs, such as "meeting with the complainants to explain the situation, formally apologizing, immediately offering to reimburse the complainants for any expenses they had incurred and, perhaps offering assistance in finding another solution." (para. 124).

[127] I will now turn to the application of the three-part test set out in *Meiorin* to the facts of this case.

Standard, Purpose or Goal and Rational Connection to Function

[128] The Respondents say that the basis for a BFRJ is that the Respondents are evangelical Christians whose religious beliefs prohibit them from permitting certain conduct which they believe to be immoral from occurring in their home. They say that their religious belief is that to permit such behaviour implicates them, morally and spiritually, in that conduct.

[129] The Respondents further say that their refusal to rent a room to the Complainants was rationally connected to their religious belief, and the law recognizes that they cannot be compelled by the state to act in a manner that is inconsistent with a sincerely held religious belief: *Her Majesty the Queen v. Big M Drug Mart Ltd.*, [1985] 1 S.C.R. 296 at para. 95. The Molnars note that they believe their home is a gift from God to be used for his purposes, and that they are accountable for the use of their home, to use it for ministry and to prevent behaviour which their religion prohibits, such as sexual relations between persons of the same sex.

[130] The Respondents further say that while God does not require them to control the behaviour of others who they may meet or do business with in the public sphere, that there is a specific distinction between business outside the home (such as managing a hotel located away from their residence) and a business located inside the home.

[131] On the other hand, the Complainants say that it will only be in rare circumstances that religious beliefs will exempt a person or business from their obligations under the *Code*. In this regard, they rely on the Supreme Court of Canada's decision in *Caldwell v. Stuart*, [1984], 2 S.C.R. 603:

The Board found that the Catholic school differed from the public school. This difference does not consist in the mere addition of religious training to the academic curriculum. The religious or doctrinal aspect of the school lies at its very heart and colours all its activities and programs. The role of the teacher in this respect is fundamental to the whole effort of the school, as much in its spiritual nature as in the academic. It is my opinion that objectively viewed, having in mind the special nature and objectives of the school, the requirement of religious conformance including the acceptance and observance of the Church's rules regarding marriage is reasonably necessary to assure the achievement of the objects of the school. ... It will only be in rare circumstances such a factor as religious conformance can pass the test of *bona fide* qualification. In the case at bar, the special nature of the school and the unique role played by the teachers in the attaining of the school's legitimate objects are essential to the finding that religious conformance is a *bona fide* qualification. (para. 23)

[132] In *Caldwell*, the respondent school had been established to provide a Catholic education. I note that in this case, the Riverbend was not established to provide religious retreat accommodation, or other forms of religious accommodation. It was not advertised as a religious establishment and was not operated by the Church or any religious organization.

[133] The Complainants further argue that this case is unlike *Knights, Trinity, Caldwell*, or *Ontario (Human Rights Commission) v. Christian Horizons*, 2010 ONSC 2105. In each of those cases, the respondents were religious organizations with a mandate to advance their religious values. As noted in *Christian Horizons*:

...The qualification, to be valid, must not just flow automatically from the religious ethos of the Christian Horizons. It has to be tied directly and clearly to the execution and performance of the task or job in question. A

focus that is only on the religious organization and its mission, without regard to how it is manifested in the particular job in issue, would deprive the final element of s. 24(1)(a) of any meaning. (para. 90)

[134] The Complainants say that the Respondents have not satisfied the first prong of the *Meiorin* test. They say that the Tribunal must rigorously examine the standard to see if it is necessary to the Riverbend's function. In this regard, they identify the rule as being that a same-sex couple may not share a bedroom in the Riverbend, and that the rule was formulated by the Molnars to accord with their religious belief that cohabitation between people of the same sex is a sin.

[135] The Complainants also say, however, that this rule does not operate to define the function of the Riverbend. They say the test is not whether the Molnar's have established a religious or conscientious belief protected by the *Charter* and whether the refusal to rent the room was rationally connected to that belief. Rather, they say the test is whether the refusal to rent the Complainants a room based on the rule was rationally connected to the Riverbend's function. This must be assessed on an objective basis because to do otherwise, they say, would be to allow any religious person operating a business to say that its function is to operate the business in accordance with their religious beliefs and this would place a sphere of commercial activity outside the scope of the *Code's* protection.

[136] They further argue that this case is unlike cases such as *Knights*, where courts or tribunals have examined religious institutions and the standards they apply to employees or people accessing their services. They note the Molnar's are not a religion institution, but a private couple operating a business. This is in contrast to *Knights*, where the business was owned by the Catholic Church and operated by a Catholic men's organization with a mandate to provide support to Catholic men and families and to promote the teachings of the Catholic Church. In that case, the Tribunal specifically noted that allowing the celebration of a same-sex marriage on the premises would have resulted in a serious rupture to the relationship between the *Knights* and the Catholic Church: paras. 13, 67 and 87.

[137] The Complainants say that, in this case, there is no evidence of a direct relationship between the Respondents' private business and their Church, and no

evidence that allowing same-sex couples to stay at the Riverbend would rupture the relationship between the Molnars and their Church. They note that the Molnars opened a business, advertised accommodation in various rooms to the broad public without any restrictions based on religion, sexual orientation or any other basis, and that it is this function that needs to be measured against the standard operating in this case.

[138] Finally, they say that there is no rational connection between not allowing same-sex couples to rent a room in the Riverbend and the purpose of providing temporary accommodation. As a result, they say that the BFRJ analysis fails on the first step.

[139] I accept that the Molnars hold a sincere, personal and core religious belief that marriage is between a man and a woman and that sex outside of such a marriage, including same-sex sexual relations, is a sin. I also accept that the Molnars sincerely believe that to allow a same-sex couple to stay in a single bed in their home would harm their relationship to their Lord, and that they would not rent a room in their home for a purpose that conflicted with, or was contrary to, their personal religious beliefs.

[140] I further conclude that the standard adopted by the Respondents was that the Riverbend did not rent rooms with a single bed to persons who may engage in sexual relations outside a committed marriage between a man and a woman. In describing the standard in this way, I am mindful that there was evidence that the Respondents did, in fact, unknowingly rent to an unmarried heterosexual couple. As well, as stated previously, I do not accept that the Molnars would have rented a room with twin beds to the Complainants. However, whether the standard is identified as any room, a room with twin beds or a room with a single bed, my decision would be the same.

[141] I also find that the function of the Riverbend was to offer temporary accommodation, without any express restriction, to the general public. In this regard, I note that the Riverbend was operated as a for-profit business, and that the Molnars managed it as individual citizens. Unlike the *Knights* case, the Molnars did not operate the Riverbend on behalf of the Church, and the Church had no direct involvement in its operations.

[142] The Riverbend was advertised to the general public over the internet and throughout the Grand Forks community in various ways, including brochures. None of

the internet advertisements included any reference to any religious affiliation or operation. While there was a fish sign on a sandwich board and brochure, I do not consider that the symbol readily or clearly identified to the general public that the Riverbend was what I will characterize as a “religiously operated” bed and breakfast. In other words, the Riverbend was marketed broadly, and to persons who may have held beliefs or religious views that differed from those held by the Molnars.

[143] It was the Molnars’ personal and voluntary choice to operate a business in their home that offered temporary accommodation to the general public. They were not compelled to renovate their home to offer this service to the public, but chose to do it for a variety of reasons, including to supplement their retirement income and to take vacations in a sunnier environment.

[144] Unlike the decision in *Knights*, I am not persuaded that the standard of restricting accommodation in single bed rooms to married heterosexual couples was adopted for a purpose or goal that was rationally connected to the Riverbend’s function, which was to offer temporary accommodation to the general public. The standard was rationally connected to the Molnar’s personal religious beliefs, but not to the function or purpose of the Riverbend.

[145] As a result, the BFRJ fails on the first part of the *Meiorin* analysis.

[146] However, if I am wrong in that conclusion, I will go on to consider the other two branches of the *Meiorin* test.

Good Faith and Reasonably Necessary to Fulfill Purpose or Goal

[147] The Respondents say that religious persons can, in good faith, make a distinction between homosexual behaviour, which they believe to be morally prohibited, and homosexual people, whom they believe they are required to respect and treat well. In that regard, they rely on two Saskatchewan Court of Appeal decisions: *Owens v. Saskatchewan Human Rights Commission*, [2006] SKCA 41, and *Whatcott v. The Saskatchewan Human Rights Tribunal and others*, [2010] SKCA 26 (leave to appeal to SCC granted, appeal heard, decision pending). They say that they truly believe that God requires them not to permit homosexual sexual behaviour in their home and to do so

would violate their religious beliefs. Therefore, they say that second branch of the test has been met.

[148] I am not persuaded that either of these cases are germane to the issue before me. The cases each involved hate speech provisions and a consideration of the context in which certain advertisements were made. Further, the fact is that the Molnars did not ask whether the Complainants were going to have sex. It was sufficient that they were gay. As well, Mr. Molnar would not commit to renting them a room, either with one or two beds, even if they agreed to refrain from any sexual conduct.

[149] I also note, as the Complainants point out, that the Saskatchewan Court of Appeal in *Owens* made this final comment after concluding the advertisement under consideration in that case did not meet the standard of “hate”:

None of this is to say, of course that the Bible passages referred to by Mr. Owens, or any other sacred text, can serve as a licence for acting unlawfully against gays and lesbians. Discrimination on the basis of sexual orientation is prohibited in relation to education, employment, housing, services and facilities by *The Saskatchewan Human Rights Code* and the *Canadian Human Rights Act*. The *Criminal Code* offers protection against assaults and threats of violence and, indeed, says in s. 718.2 that evidence an offence was motivated by bias, prejudice or hate based on sexual orientation is an aggravating factor for purposes of sentencing a criminal offender. The entire community can and should expect that all of these legislative provisions will be actively engaged to protect the dignity, rights and the security of gay men, lesbians, bi-sexual and trans-identified persons. (para. 87)

[150] Having said this, the Complainants did not argue that the second branch of the *Meiroyin* test had not been met. Therefore, I will assume, without deciding, that this aspect of the test has been satisfied.

Reasonable Accommodation

[151] The Respondents say that, unlike the *Knights* case, the space in question in this case is not commercial space. Rather, it is their home. They draw a distinction between the service they offer and public offerings of accommodation in hotels and motels. They say their business “was their home” and they are responsible for the behaviour of their guests while they are in their home.

[152] They say that they conduct prayer meetings and bible studies in their home, and the fact that there are paying as well as non-paying guests does not change the characterization of the premises as a home. They also rely on the provision in the *Code* that allows a landlord to make a distinction on what would otherwise be a prohibited ground if the two people would be sharing the use of any sleeping, bathroom, or cooking facilities in the space. As well, they refer to other legislative enactments that treat homes in “special” ways, such as the *Criminal Code* provisions respecting dwelling-houses.

[153] The Respondents say they satisfied the duty to accommodate because there was nothing more they could have done after saying “sorry, this is not going to work out” without forcing themselves on someone who had clearly indicated that he did not want to talk. In essence, they argue that Mr. Eadie’s conduct in hanging up the phone absolved them of any further responsibility to accommodate the Complainants to the point of undue hardship.

[154] The Complainants say that there is no evidence to support a conclusion that the Respondents were unable to reasonably accommodate the Complainants. They note that the Respondents made no offer of alternate accommodation, engaged in no discussion about what options might be available to reconcile their right to access the service free from discrimination and the Molnar’s religious beliefs, or any hardship that might be imposed on the Respondents through any accommodative measures. They further note that the Molnars gave no consideration as to how to call Mr. Eadie or approach the conversation sensitively. Rather, they approached the conversation from the perspective of “this is not going to work”, which the Complainants say is contrary to any attempt at accommodation.

[155] The Complainants also say that there was no evidence that allowing the Complainants to stay at the Riverbend would have interfered with the Molnar’s right to worship, operate their business, or disrupt their Church membership. They note that this is not a case where the Molnars were effectively deprived of any meaningful choice about their religious practice or the freedom to hold certain religious beliefs. They say that the Molnars made a choice to operate a business in their home, and that the running of that business was not an expression of their religious belief or a form of worship. They say

that to hold them to the same anti-discriminatory standard as other businesses does not deprive them of a choice with respect to their religious beliefs or practice, though it may mean some degree of hardship.

[156] The Complainants further say they were entitled to research available accommodation, select one that was advertised, and make a reservation free from any concern that their sexual orientation would preclude their ability to access their preferred form of accommodation. They argue that the Supreme Court of Canada has stated that “[t]he proper place to draw the line in cases like the one at bar is generally between belief and conduct. The freedom to hold beliefs is broader than the freedom to act on them” (*Trinity Western*, para. 36).

[157] For example, in *Saskatchewan (Marriage Act, Marriage Commissioners) (Re)*, 2011 SCKA 3, the Saskatchewan Court of Appeal held that:

...in considering the benefits of the [legislative amendments exempting civil marriage commissioners from performing same-sex marriages], it is also important to note that the freedom of religion interests they accommodate do not lie at the heart of s. 2(a) of the *Charter*. In other words, the *Options* are concerned only with the ability of marriage commissions to act on their beliefs in the world at large. They do not in any way concern the freedom of commissioners to hold the religious beliefs they choose or to worship as they wish... (para. 93).

[158] In that case, the Court concluded that marriage commissioners, when performing their public duty, could not refuse to perform same-sex marriages, even if such a marriage was inconsistent with their personal religious belief.

[159] After considering these arguments, and for the following reasons, I have concluded that the Respondents did not accommodate the Complainants to the point of undue hardship.

[160] First, I do not accept that the Respondents can rely on the provisions of the *Code* respecting tenancy. The Complainants were not seeking to “share” sleeping space with the Respondents. They reserved a private room for their exclusive use. Further, and in any event, it is s. 8 of the *Code* that is the applicable section in this case and it contains no similar exception.

[161] Second, while I appreciate that the Molnars operated their business out of their personal residence, they designated space for the exclusive use and occupancy of Riverbend guests. While it operated as a business, those parts of the Riverbend that were occupied by guests may properly be characterized as business premises. These parts of the building were expressly renovated and reserved for the use of the paying customers. The Molnars allocated separate space for the exclusive use of themselves.

[162] Third, as noted earlier, I do not accept that Mr. Molnar intended to offer any alternatives to Mr. Eadie at the time of the call. It may be that, on reflection, Mr. Molnar concluded that offering an alternative might have been a good idea. On this point, however, I prefer Mrs. Molnar's evidence that she did not turn her mind to the impact on the Complainants prior to the phone call, and there was no indication that Mr. Molnar did so. Mr. Molnar did not testify that there was any discussion about alternatives between he and his wife, and neither he nor Mrs. Molnar took any steps to try to communicate further with the Complainants, either through a further phone call or a letter.

[163] As well, I do not accept that, even if Mr. Molnar "thought" he might invite the Complainants over for breakfast to talk about the situation, that merely thinking, and not acting, is sufficient to satisfy the duty to accommodate. At a minimum, Mr. Molnar was required to extend some form of accommodation. He did not. His choice of language was ill-considered and offensive. The onus was on the Respondents to call Mr. Eadie back and initiate further dialogue and exploration of alternatives. In my view, the Respondents cannot rely on Mr. Eadie's reasonable reaction and offense to the cancellation of the reservation, and the manner in which it was done, in order to satisfy their duty to accommodate to the point of undue hardship.

[164] Nor do I accept that, in any event, Mr. Molnar would have offered the Complainants alternate accommodation, such as a room with two beds, or separate bedrooms. Mr. Molnar would not commit to doing so in his evidence and nor should the Complainants have been required to provide certain assurances in order to access the service.

[165] Finally, in considering the "spectrum" analysis that was adopted by the Tribunal in *Knights*, I find that this case falls more toward the commercial end of the spectrum.

The Riverbend was not operated by a Church or religious organization. While the business was operated by individuals with sincere religious beliefs respecting same-sex couples, and out of a portion of their personal residence, it was still a commercial activity. It was the Molnars' personal and voluntary choice to start up a business in their personal residence. In this respect, the Molnars were not compelled by the state to act in a manner inconsistent with their personal religious views.

[166] I also note that the Molnars did not restrict their clientele to only the Christian community. I make no finding on whether, if they had, this would have made a difference to my decision.

[167] In light of the above, I find that the Respondents have not satisfied the duty to accommodate the Complainants to the point of undue hardship. The Respondents have not satisfied the third branch of the *Mieorin* test and I find that the complaint is justified.

[168] In reaching this conclusion, I am mindful that our Courts have recognized that there are occasions when the exercise of personal religious beliefs in the public sphere may be limited or carry a cost. For example, in *Alberta v. Hutterian Brethren of Wilson Colony*, 2009 SCC 37, the Supreme Court of Canada noted that:

... in many cases, the incidental effects of a law passed for the general good on a particular religious practice may be less serious. The limit may impose costs on the religious practitioner in terms of money, tradition or inconvenience. However, these costs may still leave the adherent with a meaningful choice concerning the religious practice at issue. The *Charter* guarantees freedom of religion, but does not indemnify practitioners against all costs incident to the practice of religion. Many religious practices entail costs which society reasonably expects the adherents to bear. The inability to access conditional benefits or privileges conferred by law may be among such costs. A limit on the right that exacts a cost but nevertheless leaves the adherent with a meaningful choice about the religious practice at issue will be less serious than a limit that effectively deprives the adherent of such choice (para. 95).

[169] Similarly, in this case, the Molnars are not deprived of a meaningful choice in the exercise of their religion, though their choice or mode of business operation may be limited by their religious practice. Having entered into the commercial sphere, the Molnars, like other business people, were required to comply with the laws of the

Province, including the *Code*, which is quasi-constitutional legislation that prohibits discrimination on the basis of sexual orientation.

REMEDY

[170] Having found the complaint to be justified, I will turn to a consideration of remedies pursuant to s. 37 of the *Code*.

Mandatory Cease and Desist

[171] Pursuant to s. 37(2)(a) of the *Code*, I order the Respondents to cease and desist the discriminatory conduct and to refrain from committing the same or similar conduct.

Declaratory Order

[172] The Complainants requested a declaratory order pursuant to s. 37(2)(b) that the conduct complained of, or similar conduct, is discrimination contrary to the *Code* and it is so declared.

Injury to Dignity, Feelings and Self-Respect

[173] Pursuant to s. 37(2)(d)(iii), the Complainants each sought \$2,500 for damages for injury to dignity, feelings and self-respect. As noted earlier in this decision, they each testified to the impact of the cancellation on them, and how it offended and shocked them. I accept this evidence. I am satisfied that they suffered indignity and humiliation as a result of the Respondents' discriminatory conduct. I am also satisfied that they were able to secure alternate accommodation relatively quickly and there was no evidence of ongoing trauma, anxiety or other mental or physical detriment as a result of the discriminatory conduct. Considering these factors, I order the Respondents, jointly and severally, to pay to each Complainant the sum of \$1,500.00 as damages for injury to dignity, feelings and self-respect.

Expenses

[174] Pursuant to s. 37(2)(d)(ii), the Complainants sought reimbursement for travel and accommodation costs incurred in respect of adjourned hearing dates. I am not satisfied that the Complainants unavoidably incurred these costs or that they could not have

cancelled or rescheduled the accommodation. I award no compensation for these expenses.

[175] The Complainants also sought compensation for travel and accommodation expenses incurred to attend the hearing. I am satisfied that they should be compensated for reasonable costs incurred in this respect. I accept their calculations for the cost of travel and accommodation and order the Respondents to pay to each Complainant the sum of \$340.00 for travel and accommodation related to the second hearing.

[176] Finally, also pursuant to s. 37(2)(d)(ii), the Complainants sought compensation for wages lost to attend the hearing. I am satisfied that this is a reasonable request and accept their calculations as to wage loss. I order the Respondents to pay to Mr. Eadie the sum of \$403.00 and to Mr. Thomas the sum of \$447.00.

Court Order Interest

[177] I order the Respondents to pay post-judgment interest until the respective awards are paid in full, based on the rates set out in the *Court Order Interest Act*. R.S.B.C. 1996, c. 79, as amended (the “Act”).

Joint and Several Liability

[178] I find that the Respondents are jointly and severally liable for the awards.

Enid Marion, Tribunal Member