NOVA SCOTIA HUMAN RIGHTS BOARD OF INQUIRY

IN THE MATTER OF: The Nova Scotia *Human Rights Act* (the "*Act*")

and

IN THE MATTER OF: Board File No. 51000-30-H05-1860

BETWEEN:

Y.Z.

("Complainant")

- and -

Halifax Regional Municipality

("Respondent")

- and -

The Nova Scotia Human Rights Commission

("NSHRC")

DECISION OF THE BOARD OF INQUIRY - DAMAGES

At the time I rendered a decision on the question of liability, on March 15, 2018, I decided, because of the potential magnitude of the damages award, to request from Counsel updated briefs on the issue of damages, and gave Counsel an opportunity for oral submissions.

I believe, given the volume of evidence led on the issue of liability and the existence of discrimination, it was important for Counsel to have another opportunity to focus on the question of damages.

Briefs were filed and oral submissions occurred on June 4, 2018.

The following is my award on damages.

General Damages – Legal Principles

1. Boards of Inquiry may award damages for the harm and injury to a Complainant's dignity and self-respect and to recognize the humiliation suffered as a result of discrimination or harassment.

2. Some of the considerations in assessing general damages in the human rights context are addressed at paragraph 67 of ***Marchand v 3010497 Nova Scotia Ltd.***, (2006) 56 CHRR D/178 (NSBOI):

> In considering an appropriate range of general damages I am guided by a number of factors, which are, I believe relevant. I have considered the non-applicability of the principles applicable to unjust dismissal. The relevant factors include the following:
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> a) The redress for the harm suffered by the discriminatory conduct, which in this case I consider to be economic, sociological (impacting an entire family) and emotional;
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> b) the need to ensure that a message is delivered to the Complainants [Respondents] and others that human rights must be respected; and
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> c) the need to ensure that the award does not appear to be so small as to constitute a minor cost of doing business, such as to encourage risk taking.

3. Further relevant considerations are set out in ***MacTavish v Prince Edward Island***, 2009 PESC 18:

> 49 The court must take a common sense, fair and equitable approach to any award of general damages. It must take into account the principles outlined above. General damages in human rights cases are not intended to punish the wrongdoer. They reflect a recognition by society that one has been harmed by the actions of another. The harm we speak of with dignity and self-respect of the victim. We must attempt to restore, but not reward. We must be realistic and consider whether any award bears a reasonable relationship to other awards for similar discrimination.

4. It is submitted by Counsel for Y.Z. that although the upper limit for general damages in tort is not strictly applicable to discrimination cases, some of the principles regarding such damages may be of assistance in developing principles regarding the evolving law of damages in cases of discrimination. Counsel for Y.Z. also submits that general damage awards must be conventional to a degree but general damage awards for discrimination should also reflect an individualized fact-specific assessment of the impact of the discrimination on the victim, in the same way that general damage awards in tort for personal injury must reflect individualized assessment of the impact of the personal injury.

5. Counsel for HRM, submitted that following the trilogy of cases decided by the Supreme Court of Canada in 1978 (***Andrews v. Grand Toy*** [1978] 2 SCR 229; ***Arnold v. Teno*** [1978] 2 SCR 287 and ***Thornton v. PGSD*** [1978] 2 SCR 267), the upper limit of general tort damages for personal injury was set at $100,000 for the most serious cases of permanent disability involving quadriplegia or similar such serious disability from work, pleasurable activities and valuable services. Allowing for inflation, the $100,000 upper limit for general damages for personal injury as of November 2014 was $356,154. Counsel for HRM further submitted that the range established in the trilogy limits the amount that I can award.

6. It is submitted for Counsel for Y.Z. that the present $356,154 benchmark set by the 1978 trilogy would support a general damage award for Y.Z. in the area of $200,000 to $250,000. It is further submitted by counsel for Y.Z. that general damages should reflect the amount of psychological harm endured. It is further submitted by Counsel for Y.Z. that general damages of $200,000 are appropriate where psychological harm results in total disability for remainder of career and life.

7. Y.Z. is likely totally disabled and largely housebound due to his fear of encountering HRM employees. The wrongful discrimination is linked to severe psychological issues and deprived him of the ability to support his family and the ability to work in his chosen profession until retirement. However, despite the seriousness of injuries to Y.Z. and his significant degree of disability, and as discussed in further detail below, in my view there are differences between his injuries and the injuries of the Plaintiffs of the trilogy cases.

8. Furthermore, the limits for tort damages, and the relevant common law principles relevant to such awards, are not and should not be strictly applicable to general damage awards for wrongful discrimination in the human rights context. They serve as guides only.

9. There are other cases which are of much more assistance to me in this analysis.

10. In ***Smith v Menzies Chrysler***, 2009 HRTO 1936 ("***Smith***"), the Complainant was found to have suffered from a sexualized work environment rife with comments and jokes of a sexual nature and exhibitionist type behavior. More importantly for present purposes, the Corporate Respondent employer failed to address the situation, despite the Complainant having clearly raised objections to the secularized conduct, and instead terminated the complainant employment.

11. The Tribunal in ***Smith*** separated out its various awards of damages, ordering that in addition to awards against the individual respondents and an award of $15,000 against the Corporate Respondent for the termination of employment (found to be a reprisal):

> 181 … All personal respondents and the corporate respondent are jointly and severally liable to pay the complainant $25,000 for the inherent right to be free from a poisoned work environment, for failing to address the poisoned work environment because of sex and sexual orientation under section 5(1) and for the injury to the Complainant's dignity, feelings and self-respect flowing from this violation.

12. In ***Sulz v Canada (Attorney General)*** [2006] B.C.J. No 121 (B.C.S.C) affirmed [2006] B.C.J. No 3262 (C.A.) the British Columbia Supreme Court assessed damages on tort principles on January 19, 1996 (date of trial decision) after finding the R.C.M.P. liable for the tort of negligent infliction of mental suffering resulting from the sexual harassment of a female police officer by a supervisor.

13. Although the sexual harassment case was tried in tort, clearly the same case could have been heard before a Human Rights Board of Inquiry on the basis of sex discrimination.

14. The B.C. Supreme Court in ***Sulz*** noted at paragraph 87-88 that the claims of the Plaintiff could have been addressed by a complaint under the *Canadian Human Rights Act* and stated at paragraph 87:

> The remedies available under the CHRA appear to be sufficient. Section 53(2) provides for compensation for pain and suffering, special expenses, and wage loss caused by the discriminatory acts. Although the wording of the statute appears to contemplate only past wage loss, the Federal Court of Appeal has determined that the Human Rights Tribunal may award compensation for future wage loss based on tort principles. <u>The Federal Court of Appeal found that the ultimate goal of the tribunal must be the same as that of the courts: to make the victim whole for the damage caused</u> (See Canada (A.G.) v. Morgan, [1992] 2F.C. 401, 85 D.L.R. (4th) 473 at paragraph 19). (emphasis added)

15. The Court at paragraph 159 held that although the female police officer had many other stressors in her life, the sexual harassment was the proximate cause of the female officer suffering depression, which in turn prevented her from continuing her career as a police officer.

16. At paragraph 155 of the decision, the Court referred to the expert evidence which concluded that she would probably never be able to return to work as a police officer or in related work. At paragraph 163 of the decision, the Court referred to the evidence that she had lost the ability to handle stress and that the expert was very guarded about her capacity to return to any kind of competitive employment, and that she might be able to do part time tasks albeit in a stress-free environment.

17. Moreover, in ***Sulz*** at para. 166-168 it was held that because the Plaintiff had been inflicted with a life-long handicap, caused by the tortious conduct, she should be awarded $125,000 general damages. The Court in ***Sulz*** distinguished the award of $5,000 general damages awarded to a female R.C.M.P officer for sexual harassment

in ***Clark v Canada*** [1994] 3 F.C. 323 on the basis that "the plaintiff in Clark was able to recover her mental health and did not suffer the kind of long lasting injury that the plaintiff in this case will be forced to deal with for the rest of her life."

18. In ***O.P.T. v Presteve Foods Ltd.***, 2015 HRTO 675 (CanLii) the Ontario Human Rights Tribunal of Ontario awarded general damages awards, respectively, of **$150,000** and **$100,000** to each of two Mexican female temporary workers who were sexually harassed and sexually assaulted. The Tribunal found at para. 172 that O.P.T., who was awarded $150,000, had to work in a "sexually poisoned work environment". The workers returned to Mexico and did not claim loss of earnings damages. There was no evidence that the female Mexican workers suffered any long-term disability or psychological injury as a result of the sexual discrimination. The awards appear to have been for loss of dignity, self-respect, humiliation and sexual predation suffered by the Mexican female workers.

19. In ***O.P.T.*** at para. 199-200, the Tribunal noted that it was following the jurisprudence of the Tribunal and making global assessment of damages for injury to dignity, feelings and self-respect based primarily on two criteria:

> … the objective seriousness of the conduct and the effect on the particular applicant who experienced discrimination…
>
> The first criterion recognizes that injury to dignity, feelings, and self-respect is generally more serious depending, objectively, upon what occurred. For example, dismissal from employment for discriminatory reasons usually affects dignity more than a comment made on one occasion. Losing long-term employment because of discrimination is typically more harmful than losing a new job. The more prolonged, hurtful, and serious harassing comments are, the greater the injury to dignity, feelings and self-respect.
>
> The second criterion recognizes the applicant's particular experience in response to the discrimination. Damages will be generally at the high end of the relevant range when the applicant has experienced particular emotional difficulties as a result of the event, and when his or her particular circumstances make the effects particularly serious. Some of the relevant considerations in relation to this factor are discussed in *Sanford v. Koop,* 2005 HRTO 53 (CanLii) at paras. 34-46.
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> [200] The considerations identified in the *Sanford v Koop* decision, above, as being relevant to the applicant's particular experience in response to the discrimination are (at para. 34):
>
> - Humiliation experienced by the complainant
> - Hurt feelings experienced by the complainant
> - A complainant's loss of self-respect
> - A complainant's loss of dignity
> - A complainant's loss of self-esteem
> - A complainant's loss of confidence

- The experience of victimization
- Vulnerability of the complainant
- The seriousness, frequency and duration of the offensive treatment

20. In the ***City of Calgary v. C.U.P.E Local 38***, 2013 CanLii 88297 (Alberta Grievance Arbitration Award), by agreement all complaints to the Human Rights Commission and all grievances under the collective agreement were decided at arbitration. In ***City of Calgary*** the female complainant had been sexually assaulted multiple times in November and December 2010 by being fondled by a foreman at her desk. The managers supervising the perpetrator failed to take appropriate action to protect the victim in a timely manner and the lack of management action aggravated the situation. The Union claimed $150,000 general damages relying upon the ***Sulz*** case. The arbitrator held that the victim had "suffered significant life changing injuries which will continue to adversely affect her". The arbitrator awarded $125,000 general damages because there was not the "certainty of many years of suffering and limited functioning having been documented" as in ***Sulz*** and that there was evidence that her functioning might improve with rehabilitation.

21. In A.B. ***v. Joe Singer Shoes Limited***, 2018 HRTO 107, general damages of $200,000 were awarded to a racialized immigrant woman subjected to multiple sexual assaults over the course of the decade, in addition to a poisoned workplace where-in she faced harassment based on sex and race. The HRTO also awarded pre-judgment interest dating back to 2008. The complainant was a former retail worker who alleged that she was sexually harassed and assaulted by her landlord and employer. The worker in question was a single mother who had immigrated to Canada from Thailand in 1979. She sold shoes for Joe Singer Shoes Limited, and eventually moved into an apartment above the store (both of which were operated by the individually-named respondent, Mr. Singer). The worker alleged that Mr. Singer had sexually harassed and assaulted her over a period of many years, both in the store and in her apartment. In addition, the worker also alleged that Mr. Singer had made fun of her body, accent, English language skills and had made derogatory comments about her place of origin.

22. In reviewing the evidence, the HRTO acknowledged that the case was essentially a "he said, she said" case and therefore weighted the credibility of the worker and Mr. Singer in assessing their evidence. On the evidence before it, and despite the worker having an imperfect memory of events, the HRTO concluded that the worker had been sexually harassed and solicited both at work and in her apartment and awarded $200,000 in general damages for the worker's injury to dignity, feeling and self-respect. In making such a large award, the HRTO was particularly sensitive to the fact that the worker was objectively vulnerable and unable to escape the harassment which had occurred both in her place of work and her home.

General Damages – Evidence

Evidence of Dr. Genest

23. Dr. Genest is a psychologist who performed a psychological assessment of Y.Z. in September 2014 and submitted an expert report in that respect (Exhibit 11).

24. Although Dr. Genest's report is largely self-explanatory in speaking to Y.Z.'s condition and Dr. Genest's conclusions as to how the condition came about, in his testimony on March 10, 2016, Dr. Genest clarified his process in reaching his conclusions and confirmed that as of October 2014 he diagnosed Y.Z. as having somatic symptom disorder, major depressive disorder and post-traumatic stress disorder. Dr. Genest also confirmed that he tied Y.Z.'s depressive symptoms to difficulties in the workplace and, in his opinion, there were "no grounds to suggest [Y.Z.] would be experiencing his current disabling conditions were it not for his experience of negative work environment and threat to his safety in the workplace". Dr. Genest opined the same causative link existed between Y.Z.'s somatic symptoms disorder and PTSD. Dr. Genest felt there was a less than 15% chance of Y.Z. improving sufficiently to return to work before age 60.

25. Dr. Genest further elaborated on this causative link as follows:

> Q. During your examination – your tests was – was there any other – was there anything else that you could have, in your mind, led to the – the – the condition [Y.Z.] finds himself in?
>
> A. Not to disagree. I – I believe in the medical records there's some indication of some GI complaints, some headaches preceding the difficulties in the workplace. They were not completely disabling. I suspect that [Y.Z.] you know as I said, "Some of us might have a stomach that's a bit touchy to begin with," and I – I suspect that he may be prone to and – and this may be a pre-existing condition prone to developing somatic symptoms under stress but I think that the – the – the workplace experiences were – providing the stressors that lead to this escalating to the point at which it became a disabling condition.
>
> I didn't see other – other causal factors that would certainly have caused the PTSD or depression.

26. When questioned by Commission Counsel, Dr. Genest deposed that he was satisfied with the validity of his conclusions. He also further explained in layperson's terms the effect of somatic symptom disorder, major depressive disorder, and PTSD, specifically with respect to Y.Z. With respect to prognosis, he concluded: "I think that [Y.Z.'s] in such a bad place physically and psychologically that it almost has a life of its own now. So, I think it's unlikely he's going to get back to a productive work life".

27. Regarding possible treatment for the psychological conditions Dr. Genest diagnosed in Y.Z., Dr. Genest testified that Y.Z. would require prolonged and intense treatment of a greater frequency than what is available through public treatment.

28. In his additional testimony, Dr. Genest stated that the odds of Y.Z. returning to any employment, even after 100 weeks of intensive treatment, were "pretty low", although there was some possibility of his being able to do some part time work.

29. In cross examination, Dr. Genest provided that it would be a reasonable undertaking for Y.Z. to see someone who could prescribe medication and assess that option of treatment.

30. Dr. Genest's stated at p. 43 of Exhibit 11 as follows:

> … YZ's psychological dysfunction, his diagnosed disorders, the severity of the symptoms and resulting impairments associated with the them would very probably not have occurred were it not for the perceived discriminatory work environment that he experienced and the sense of threat to his safety and well-being.

31. At p. 42 of Exhibit 11 Dr. Genest stated:

> Causation
>
> As noted previously, it is highly likely that Y.Z.'s current symptoms and the resulting impairment are related to his experience of a negative workplace environment, trauma in that environment, and the associated sense of threats to his safety. It is obviously not possible to know with certainty what an individual's mental health would be if he had had different experiences. Nevertheless, both current information obtained from Y.Z. and his wife during this assessment as well as extensive information from the health records **tie** his deteriorating psychological well-being to ongoing difficulties in the workplace and to one or more events that he perceived as specific threats to his safety in the workplace… [Emphasis added]

Evidence of YZ's Spouse

32. YZ's spouse provided testimony regarding the impact on Y.Z. and his family of the alleged discrimination Y.Z. has suffered at Metro Transit. She stated that when Y.Z. started working at Metro Transit in 1979 "he was kind." "He'd help anybody". "He was a wonderful man," and that the two of them were busy and active with their children. YZ's spouse witnessed a change in Y.Z. that started around 2000 or 2001, and he went from being her "rock" to a "broken pebble". She testified that the two of them do not have a relationship now and that their son says his father died seven years ago.

33. YZ's spouse provided similar details to Dr. Genest in a collateral interview with him, the notes from which are at Exhibit 16, and which YZ's spouse testified as being correct. These notes also provide that "we have been suffering too and have had lots of cutbacks financially and it has affected all of us". YZ's spouse testified that while supporting Y.Z. through his difficulties, she suffered a nervous breakdown as well and had to get psychiatric help for herself, during which time she missed two years from work.

34. Lastly, when asked on cross-examination if R.S.' death significantly altered the mental health issues that Y.Z. was experiencing, YZ's spouse testified as follows:

> A. No, it was coming up to it, it was the writing on the wall of racism, it was different things that were said to him racism, it was, like it was all that. And then he felt he tried to get to HRM to help him, but nobody would help him. So, him and Randy were friends, they met with each other, they talked and that. And when Randy died [Y.Z.] was devastated because of what everything was going on throughout the workplace.
>
> Q. And devastated to the point very quickly he could never return to the workplace?
>
> A. Well he tried to commit suicide too.

Evidence of Cathy Martin

35. Cathy Martin also testified of the changes of Y.Z. over time and described it as follows:

> A. M-hm. Well, in the last, we're going the last 15 years, the change in the last 10 years in [Y.Z.] in his mental health and all of the disassociation of himself from everything and everybody is still ongoing. His health has deteriorated. I've seen him become withdrawn, anger, depressed, suicidal, fear of people of HRM. It caused him anxiety, stress, emotional distress. If you were to say, "Okay, I want you to go into the workplace," [Y.Z.] will never step back into that workplace, if he did, he probably would collapse. That's what it is. He no longer does any functions like they used to, him and his wife. He doesn't go, they don't camp anymore, they don't do anything like that. He used to go four-wheeling all the time when they would camp and do that. He doesn't do anything like that anymore, he's just become – the first couple of years he spent his whole time in house, never left his house. He doesn't feel worthy of himself. He, as a father, provider, he was really let down with that as the main financial person. In his relationship with his wife and family he was the man that kept that whole loving environment going. Now he's not even a father to his children, he has disconnected from them and his wife. It bothers me to see what has happened to them as a couple even, and my friend. And he doesn't go anywhere, he doesn't come out and socialize or entertain. That's not [Y.Z.] anymore. (Transcript, March 8, 2016, pages 428-429)

General Damages – Analysis and Award

General Damages for Y.Z.

36. Commission Counsel submits that damages awarded to the Complainant in ***A.B. v. Joe Singer Shoes Limited***, 2018 HRTO 107, is distinguishable from the facts before me. Commission Counsel submits Y.Z. does not share the characteristics of extreme vulnerability, which the Ontario Human Rights Tribunal had found to be an important factor mitigating in favor of a higher award.

37. Commission Counsel further submitted the impact on Y.Z. of the discrimination that occurred appears to be more egregious than the impact of discrimination which occurred in ***Willow v. Halifax Regional School Board***, 2006 Carswell NS 2005 *(*NSBOI*)*. As well, there were additional aggravating factors that mitigate in favor of a higher damage award including the size and resources of HRM and its absolute failure to appropriately investigate and respond to Y.Z.'s complaints of discrimination during his employment.

38. Commission Counsel suggests that the range in damages lie somewhere in the in range of $35,000 to $200,000.00, the $200,000.00 being awarded for the extreme example of discrimination in the ***Joe Singer*** decision.

39. Counsel for HRM attempted to distinguish the facts before me and the facts set out in the ***O.P.T.*** decision. Counsel for HRM correctly points out that the time frame for discriminatory conduct commenced around 2000, approximately at the time R.S. and David Buckle joined the work force.

40. Counsel for HRM argued that, based on the evidence of Dr. Genest, there were work based and nonwork based stressors in Y.Z.'s life, and as well there were work based stressors which were not discriminatory in nature.

41. It is submitted by Counsel for Y.Z. that the <u>psychological impact</u> of the discrimination includes the loss of pleasurable activities and amenities of life, which cannot be recovered for the 12 years from January 19, 2007 until the present. Y.Z. has been largely house-bound from 2007 until now, due to his fear of encountering employees from the Metro Transit Maintenance Department. He has attempted suicide and he is at risk of suicide. His wife regards him as "broken". His son says that he "died" in 2007 when he attempted to commit suicide. His work at Metro Transit was the primary source of his dignity and self-respect. Counsel for Y.Z. submitted that failure of Metro Transit to acknowledge the existence of the racial discrimination suffered by Y.Z., his wife and his friends, R.S. and David Buckle has left Y.Z. an empty shell of his former self. Since January 2007, Y.Z. and his family have lived in relative poverty.

42. In view of the above principles and facts I award general damages for pain and suffering to Y.Z. in the amount of $80,000.00. In ordering this amount, I have considered that there are certain aspects of Y.Z.'s history that were not connected to incidents in the workplace which have contributed to his general damages. In particular, the impact of the death of R.S. could not have been anticipated or prevented by HRM. I suspect that this event, coming immediately after Y.Z.'s return back to work, had a devastating impact on his ability to function in the workplace. Further, Y.Z. also had some other health issues, which are documented in the medical reports, which may have contributed, as well, to his inability to work, such as recurring back pain and gastrointestinal issues. The above issues will be discussed in more detail below in relation to the issue of compensation for pecuniary losses.

43. The $80,000.00 award for general damages, however, establishes the significant impact the workplace at Metro Transit had on the mental and physical health and the quality of life of Y.Z.

General Damages for YZ's Spouse

44. Commission Counsel submits that if a discrimination is proven that this is an appropriate case to make an award for general damages to the non-complainant, being Y.Z.'s wife, YZ's spouse. Such an award was made ***Johnson v. Halifax Regional Police Service***, 2003 Carswell NS 621. This case involved a complaint of discrimination based on race with respect to a police stop of the Complainant's vehicle. In addition to the award to the Complainant, the Board found it was appropriate to also award damages to a non-complainant who had been driving the vehicle:

> 97 Mr. Wood reminded me that I have authority under the *Act* to make an award to a person who is not a complainant. I award $1000 to Earl Fraser payable jointly and severally by both respondents. Mr. Fraser went out for a quiet Sunday drive and found his life quite altered through no fault of his own. Constable Sanford was civil to Mr. Fraser throughout the night in question but his action still had the effect of dragging him into a long proceeding over which he had no control. He for some time thought he might have to pay over $1000 in fines, and getting the tickets cancelled turned out not to be a straightforward matter. I accept his evidence that the tickets were only cancelled because a police officer who had heard of his difficulties approached him off duty and took it upon himself to help. I find Mr. Fraser experienced the effects of this discriminatory act, albeit to a much lesser extent than Mr. Johnson, and is entitled to an award on this basis.

45. In ***Willow v Halifax Regional School Board***, 2006 NSHRC 2, a non-complainant student was awarded general damages of $2,500.00 and the complainant's parents were awarded $1,000.00 in compensation for expenses they incurred in travelling to support the Complainant. The case involved a case of discrimination based on sexual orientation. The Complainant teacher was found in a change room with a student and

those encountering the two reported the Complainant to the principal, who called the police. No wrong doing was found, but no amends were forth coming in discrimination was proven. The Board found at paragraph 137 of the decision:

> [137] As I have said, in my opinion, the student has been discriminated against as well. A presumption has been made about her sexual orientation and a conclusion drawn about the likelihood of her participation in a sexual encounter with a female teacher on the basis of that presumed sexual orientation. She too has had her name dragged through the mud and had her life disrupted. I understand that I may provide her with a remedy as well. She has been treated as a hapless child. I refer to the broad remedial power granted by section 34(8) of the *Act* and the award granted Mr. Earl Fraser by Professor Girard in Johnson. I order that the student be paid $2,500.00.
>
> [138] Ms. Willow's parents rallied round admirably, coming to Halifax immediately after the incident and doing their utmost to support her and effect and immediate resolution. I award $1,000.00 as a contribution to their expenses.

46. I have also considered, with respect to remedies with respect to non-complainants, the decision of the Supreme Court Canada in ***Moore v. BC*** [2012] 3 SCR 360, where the Court commented at paragraphs 55-70 on remedies that are too "remote" from the scope of a complaint. In that case the remedies in question expanded beyond strictly compensatory and remedial issues for the complainant into the realm of orders and supervisory remedies which would be more appropriately considered in a complaint of "systemic discrimination." In my opinion the ***Moore*** decision, which postdates ***Johnson*** and ***Willow***, does not alter my ability to award compensation in these circumstances to a non-complainant.

47. YZ's spouse has testified as to the significant impact this matter has had on her. She has felt the loss of her husband, as have her children. She was off work for two years as a result of her own mental illness, which arose because of her support for Y.Z. YZ's spouse travelled each day to the drawn-out proceedings with Y.Z. and stayed throughout all the testimony, despite being excluded in the early days as a witness.

48. Further, the discriminatory actions of Arthur Maddox negatively impacted YZ's spouse. I have already canvassed the evidence in relation to the barbeque and the phone call.

49. In my opinion all of the above are safely within the scope of the complaint, and a reasonably foreseeable result of the acts of wrongful discrimination.

50. Under the circumstances, I believe it is reasonable to award to YZ's spouse the sum of $25,000.00 as general damages in this matter.

Pre-judgment Interest on General Damages

51. The standard rate of prejudgment interest in human rights cases in Nova Scotia is 2.5%. There are 2 potential dates from which the prejudgment interest is calculated: either the date of the last discrimination, which is the date used in the ***Joe Singer*** decision, or the date of filing of the complaint, as was done in ***Cromwell v. Leon's Furniture Ltd***., 2014 Carswell 310(NSBOI).

52. Counsel for Y.Z. argues that prejudgment interest should be calculated as of June 22, 2004, to the date of the damage award. Counsel for HRM argues that prejudgment interest from the date that the complaint was filed. Commission Counsel submits that Y.Z. should not be unduly prejudiced by the selection of the date of prejudgment interest, and as well that Y.Z. cannot disproportionately bear the fall out of any delay.

53. Given the significant amount of the award for general damages, and as well the overall amount of the award, I order prejudgment interest from the date the complaint was filed in the amount of 2.5% per annum.

Damages for Past and Future Income Loss – General Principles

54. As for pecuniary damages, including awards for lost wages, the Honourable Justice Russell Zinn (*The Law of Human Rights in Canada* (Toronto: Thomson Reuters, 2015 - loose-leaf revised 2015, release 28)) states that "[u]nlike damages for mental distress which in some jurisdictions is limited, there are no limits on the amounts to be awarded as lost earnings" (chapter 16 at page 18).

55. However, there are reasonable and principled limits to such awards.

56. As mentioned above, although common law principles in tort and contract on the recoverability of non-pecuniary and pecuniary damages may be useful as guides in the context of wrongful discrimination complaints under human rights legislation, they are not strictly applicable.

57. The following is a frequently quoted paragraph from ***Walsh v Mobil Oil Canada***, 2013 ABCA 238 (CanLII) on the poof required to establish pecuniary losses in a human rights complaint:

> [44] A causation analysis of some form is therefore required. The causation analysis that springs to mind is that utilized in tort law, the "but for" test. The plaintiff must show that "but for" the defendant's negligent acts (here read discriminatory for negligent) the injury would not have occurred. The "but for" test is challenging to apply in circumstances where there may be multiple independent causes that are alleged to have brought about a single harm, such as we have here. This difficulty may justify relaxing the requirement of "but for" causation and finding liability on a material contribution to risk approach. However, the jurisprudence to date has not

> required such a precise analysis in human rights cases. The most that can be said is that tribunals have drawn from contract and tort law, particularly by importing the need for a causal link and the duty to mitigate, to ascertain the amount and extent of wage loss damages sustained as a result of discriminatory conduct.

58. The above decision was applied more recently in *Horvath v Rocky View School Division No. 41***, 2016 AHRC 19 (CanLII),** *Custer v Bow Valley Ford Ltd***., 2017 AHRC 21 (CanLII) and** *Goossen v Summit Solar Drywall Contractors Inc***., 2017 AHRC 20 (CanLII)**.

59. The Tribunal in ***Senyk*** addressed the issue of compensation for lost wages and the need for a causal connection in human rights cases:

> 436 By contrast, Tribunal orders for lost salary are not based on the concept of reasonable notice. As stated in *Garrow v. Vanton* (1994), 21 C.H.R.R. D/492 (B.C. S.C.) (cited in *Toivanen* at para. 120):
>
> > Does the concept of "reasonable notice" apply in human rights compensation?... The Ontario Court of Appeal in *Piazza v. Airport Taxicab (Malton) Assn.* (1989), 60 D.L.R. 1981… stated that the purpose of compensation in the human rights context is to restore a complainant to the position he or she would have been in had the discriminatory *Act* not occurred. This is unlike the usual measure of economic loss in contract law for wrongful dismissal where the wrong suffered by the employee is the breach by the employer of an implied contractual term to give the employee reasonable notice before terminating the contract of employment is *not* the correct measure to compensate an aggrieved complainant under the *Human Rights Code*. I agree with that conclusion. (para. 72)
>
> 437 **Applying the principle that the purpose of compensation in a human rights context is to restore the complainant to the position he or she would have been in had the discriminatory *Act* not occurred, it follows that, where the complainant was unable to work by virtue of disability, and thus was unable to earn a salary, no order for lost salary is available.**
>
> 438 **I would be prepared to recognize an exception to this general principle in a case where a complainant was rendered incapable of working by virtue of the respondent's discrimination.** Indeed, such an exception can be seen at work in the many cases where the Tribunal has held that it was reasonable for a person to take some time following a discriminatory termination of employment before being able to look for work, and has ordered lost salary during that period, without any deduction for lack of mitigation: see, for example… [Emphasis added]

60. The reasonable and principled limits on recoverable pecuniary damages in human rights cases was also considered in the following quote from ***Gichuru v Law Society (British Columbia)***, 2011 BCHRT 185:

1. Standard of Causation

[279] The wording of s. 37(2)(d)(ii) makes it clear that the Tribunal's jurisdiction to award compensation is limited to any wages or salary lost, or expenses incurred, by the contravention (emphasis added). Thus, the question before me is whether the wage loss claimed by Mr. Gichuru flows from the contravention of the *Code* found in *Gichuru No. 4*. The parties have different views on how this question should be answered.

[280] For his part, Mr. Gichuru argues that everything that happened to him after the Law Society's discrimination happened because of that discrimination (or, to put it another way, would not have happened but for the discrimination) and are losses that are appropriately compensated by the Tribunal.

[281] The Law Society disagrees. In this regard, the Law Society relies on statements of the Tribunal in *Bitonti v. College of Physicians and Surgeons of British Columbia*, 2002 BCHRT 29 (CanLII), para. 32, citing a decision of the Federal Court of Appeal:

> The burden of establishing an entitlement to compensation is on the complainant: *O'Connor v. Town Taxi (1987) Ltd.*, 2000 BCHRT 9(CanLII) at para. 60. To establish such an entitlement, the complainant must show some causal connection between the discriminatory act and the loss claimed. In *Canada (Attorney General) v. Morgan* (1991), 1991 CanLII 8221 (FCA), 85 D.L.R. (4th) 473 (F.C.A.), Marceau, J.A. states:
>
> > I think one should not be too concerned by the use of various concepts in order to give effect to the simple idea that common sense required that some limits be placed upon liability for the consequences flowing from an act, absent maybe bad faith. Reference is made at times to foreseeable consequences, a test more appropriate, it seems to me, in contract law. At other times standards such as direct consequences or reasonably closely connected consequences are mentioned. *The idea is always the same: exclude consequences which appear down the chain of causality but are too remote in view of all the intervening facts. Whatever be the source of liability, common sense still applies.* (at 482) (emphasis added)

[282] Mr. Gichuru argues that the principles outlined in *Morgan* and *Bitonti* are outdated. He submits that the principle that the Tribunal must apply is that, so far as is possible, the complainant should be put in the position he would have been in "but for" the discrimination.

[283] Mr. Gichuru relies on a number of common law decisions in this regard. He notes, first, that in *Mustapha v. Culligan of Canada Ltd.*, 2008 SCC 27 (CanLII), the Supreme Court of Canada held that the test for remoteness is that there must be a "real risk" that harm or damage could occur. He also argues, relying on *Chambers v. Goertz*, 2009 BCCA 358 (CanLII), that it is sufficient to fix liability if one can foresee in a general way the class or character of loss which occurred. Applied to the context of this case, Mr.

Gichuru argues that the essential question is whether it was reasonably foreseeable that the Law Society's discrimination would seriously impact the course of Mr. Gichuru's career.

[284] Mr. Gichuru goes on to argue that it is not necessary for him to establish that the unlawful discrimination was the sole cause of his losses. There will frequently be a myriad of other background events which were necessary preconditions to the injury or loss.

[285] In *Skinner v. Fu*, 2010 BCCA 321 (CanLII), the Court was dealing with an appeal by a plaintiff whose action for damages arising from a motor vehicle accident had been dismissed. The trial judge had found that the defendant was negligent in his actions, and in breach of the ***Motor Vehicle Act***. The issue on appeal was causation: that is, whether the trial judge had erred in finding that the defendant's negligence was not the "proximate cause" of the accident.

[286] The Court of Appeal noted that, while the trial judge found that the defendant's conduct was "negligent", he also found that the conduct was not causally related to the plaintiff's damages. The Court noted that this was not a finding of liability in negligence and was more appropriately described as a finding that the defendant had breached the standard of care.

[287] With respect to the issue of causation, the Court held that the trial judge had failed to apply the "but for" test and instead erred in framing the analysis as whether the defendant's actions were the "proximate" or "effective" cause of the collision. Having found that the judge erred, the Court held that the appropriate inquiry was one of apportionment, not liability. The Court ordered a new trial.

[288] In *Skinner*, the matter at issue before the Court was liability: that is, whether it had been established that the respondent was negligent as that term has been defined at common law. Causation, that is, whether the breach of the duty caused damage or loss to the plaintiff, is part of the liability determination. So is the issue of whether that damage was so remote as to render the defendant not liable for its occurrence. The Court noted that the fact that there is more than one cause that materially contributed to the injury does not relieve a defendant from liability.

[289] Mr. Gichuru argues that *Skinner* stands for the proposition that the law does not excuse a defendant from liability merely because other causal factors for which he or she is not responsible helped produce the harm. I agree, but do not find this to be helpful in determining an appropriate award for wage loss. Before the Tribunal, a prohibited ground of discrimination need be only a basis, not the only basis, for any adverse treatment received to raise a *prima facie* case of discrimination. In both cases, the matter at issue is liability. In the matter before me, liability has been determined. The issue is assessment of remedy, which is a separate issue.

[290] In addition to the authorities provided by the parties, I note that there have been recent decisions from the Federal Court of Appeal relating to the issue, in the human rights context. The first of these is *Chopra v. Canada (Attorney General)*, 2007 FCA 268 (CanLII).

[291] In *Chopra*, the Canadian Human Rights Tribunal ("CHRT") had found that the federal government had discriminated against the complainant in the staffing of a management position. It awarded him compensation for the denial of the position but reduced that compensation to reflect the uncertainty around whether the complainant would have been awarded the position. The CHRT also reduced the period for which compensation was payable, relying on the foreseeable length of time during which the effects of discrimination could extend.

[292] The complainant applied for judicial review on the basis that the CHRT did not apply the correct legal principles in determining the compensation to which he was entitled, and, in particular, erred in law in importing tort law concepts, such as foreseeability, into the determination of compensation payable under the *Canadian Human Rights Act*. He submitted that, once it was shown that there was a nexus between the discrimination and the loss, then the entire loss was payable without regard to probabilities.

[293] The Federal Court – Trial Division, dismissed his application for judicial review, finding that the Tribunal's decision was correct and reasonable: *Chopra v. Canada (Attorney General)*, 2006 FC 9 (CanLII). The complainant then appealed that decision to the Federal Court of Appeal. Although the Court of Appeal denied the appeal, it noted that foreseeability was not an appropriate device for limiting losses for which a complainant may be compensated.

[294] In this regard, the Court first considered the decision in *Morgan*, noting that there were three different sets of reasons in that case, which each differed on the issue of the nature of any limit on liability for the consequences flowing from a discriminatory practice. In this regard, the Court stated:

> If one were pressed to identify, in law school fashion, the *ratio decidendi* of *Morgan* on this issue, it seems to me that the most that could be said is that the three members of the Court agreed on the need for a limit on liability for the consequences flowing from a discriminatory practice, but the nature of that limit was uncertain. The members of the Court agreed that there must be a causal connection between the discriminatory practice and the losses, but they did not agree as to whether foreseeability cut off liability for events past a certain point in time or past a certain event in the chain of causation. As a result, *Morgan* is not authority for the proposition that foreseeability applies to limit the extent of loss recoverable, as opposed to the kind of loss recoverable. (para. 32)

[295] The Court of Appeal noted that, at common law, only those kinds of damages which are the reasonably foreseeable consequences of a wrongful act are recoverable as damages. Heads of damages which are not reasonably foreseeable are not recoverable. However, the Court held that, in the context of compensation for losses suffered as a result of a discriminatory practice, the question of foreseeability does not arise because the statute sets out the kind of losses which are recoverable, including wages lost as a result of the discriminatory practice. The Court continued:

> The fact that foreseeability is not an appropriate device for limiting the losses for which a complainant may be compensated does not mean that there should

be no limit on the liability for compensation. The first limit is that recognized by all members of the Court in *Morgan*, that is, there must be a causal link between the discriminatory practice and the loss claimed. The second limit is recognized in the *Act* itself, namely, the discretion given to the Tribunal to make an order for compensation for *any* or *all* of wages lost as a result of the discriminatory practice. This discretion must be exercised on a principled basis.

...

... the discretion given to the Tribunal to award any or all of the losses suffered leaves it open to the Tribunal to impose a limit on losses caused by the discriminatory practice. (paras. 37 and 40)

[296] Subsequently, in *Tahmourpour v. Canada (Royal Canadian Mounted Police)*, 2010 FCA 192 (CanLII), the Court of Appeal considered a CHRT decision which found that the complainant had been discriminated against when he was discharged from the RCMP's cadet training program in 1999. The remedies awarded to the complainant included:

a) An offer of re-enrolment in the training program;

b) Compensation for salary and benefits the complainant lost for the first two years plus 12 weeks of work as an RCMP officer after graduating from Depot, discounted by 8% (the "grace period"); and

c) The difference between the average full-time industrial wage in Canada for persons of his age, and the salary that he would have earned as an RCMP officer, until such time as the complainant accepts or rejects an offer of re-enrolment in the training program (the "top up" portion).

[297] As noted by the Court of Appeal, the second time period would commence in 2002 and end at some point after the date of the CHRT award, which was issued on April 16, 2008, a period of at least six years. The Court of Appeal found that the top-up portion of the award was not consistent with the principle that the CHRT must find a causal link between the discriminatory practice and the loss claimed. The CHRT had not outlined in its decisions any reasons underlying this part of the decision and in the absence of such an explanation, the Court found that this part of the award could not be found to be reasonable. The matter was remitted to the CHRT for consideration, and the CHRT subsequently held that the wage loss caused by the discrimination extended only for the initial two-year period. In this regard, the CHRT stated:

Bearing in mind the decisions of the Federal Court of Appeal in *Morgan* and *Chopra*, and having examined the judgment of the Tribunal on this issue, in particular the Tribunal's findings that Mr. Tahmourpour could have been gainfully employed from the time of the expiry of the "grace period" until the date of the Tribunal's decision, that there was no evidence that the discriminatory conduct caused any permanent damage to Mr. Tahmourpour's ability to work, and that Mr. Tahmourpour did

> not make sufficient efforts to minimize his losses, I am unable to identify any facts, reasons or causal connection that would justify ... the continuation of compensation for lost wages beyond the grace period of two years and twelve weeks: *Tahmourpour v. Canada (Royal Canadian Mounted Police)*, 2010 CHRT 34 (CanLII), para. 9
>
> [298] In my view, having considered all of the authorities provided by the parties and those discussed above, I am of the view that Mr. Gichuru's compensation for wages lost must be considered in the context of the language of the Tribunal's enabling statute. The *Code* clearly provides the Tribunal with the discretion to compensate the person discriminated against <u>for all, or a part the member or panel determines</u>, of any wages or salary lost, or expenses incurred, by the contravention.
>
> [299] In light of the decisions outlined above, and in particular those that consider the Tribunal's discretion to award "some or all" of any wages lost as a result of the contravention, a number of general principles become clear.
>
> **[300] First, the purpose of compensation under s. 37(2)(d)(ii) is to restore a complainant, to the extent possible, to the position he or she would have been in had the discrimination not occurred.**
>
> **[301] Second, the burden of establishing an entitlement to compensation is on the complainant.**
>
> **[302] Third, in order to establish such an entitlement, the complainant must show some causal connection between the discriminatory act and the loss claimed.**
>
> **[303] Fourth, once a causal connection is established, the amount of compensation is a matter of discretion, to be exercised on a principled basis, in light of the purposes of the remedial provisions of the *Code*, and the purpose of the award** (emphasis added).

Damages for Past and Future Income Loss – Evidence

Actuarial Report Jessie Shaw Gmeiner

61. Y.Z.'s case opened on February 11, 2016, with the testimony of Jessie Shaw Gmeiner, who provided actuarial evidence on the financial loss Y.Z. suffered. Specifically, Ms. Gmeiner testified as to two actuarial reports that were filed as Exhibits 3 and 4, respectively dealing with Y.Z.'s "loss of earnings and pension income" and the "present value of [Y.Z.'s] past and future LTD benefits". Ms. Gmeiner was qualified as an expert in this area by consent of all parties.

62. For the most part, Ms. Gmeiner's reports stand for themselves, she sets out the documents she was provided with, assumptions she made, and several scenarios as to the loss of earnings, loss of pension income, and the amount of future LTD benefits owing to Y.Z. based on different ages of retirement and mortality rates. A summary of her conclusions can be found at page 23 of Exhibit 3 and page 11 of Exhibit 4.

63. With respect to the significant portions of Ms. Gmeiner's testimony, she deposed that her valuation of lost earnings and pension benefits could be updated by simply applying interest at a rate of 1.6% up until the date of calculation. She also testified that she only accounted for Y.Z.'s pre-existing conditions and not those she assumed to have been caused by the alleged discrimination in reaching her conclusions, and that the values reached assuming a 250% mortality and disability rate should be utilized unless Y.Z. ceases smoking and no longer has to take Metformin. In addition, in response to a question from the Chair, Ms. Gmeiner indicated that she did not make any assumptions about subrogation or whether any LTD benefits received by Y.Z. would have to be repaid to the insurer; she simply calculated the amount of benefits received to date and future LTD benefits that would be owing based on different retirement ages.

64. Although it was not offered as a direct rebuttal of Ms. Gmeiner's evidence, HRM, at the end of its case, submitted into evidence a report on salary and pension income comparisons for HRM from Britt Wilson, a current manager at HRM with knowledge of payroll and pension benefits (Exhibit 64). Mr. Wilson did not testify and was not qualified as an expert, as his report contains no opinion.

65. Subject to my below comments on a "causal connection" between the wrongful discrimination and pecuniary losses, and any "principled" limits on compensatory awards in human rights cases, I accept Ms. Gmeiner's report as to the calculation of Y.Z.'s past and future lost income, and in particular I find that the mortality and disability rate of 250% is a reasonable assumption based on the evidence concerning Y.Z.'s smoking and his use of Metformin.

Y.Z.'s Retirement Date

66. Ms. Gmeiner in the reports, provides for 7 potential retirement dates, and therefore 7 potential values, of Y.Z.'s claim for past and future lost income, and lost pension benefits. With the Halifax Regional Municipality Pension Plan, a plan member is eligible to retire with an unreduced pension, when the age of the member plus continuous service totals 80 or more (Rule of 80). Y.Z. was entitled to retire with an unreduced pension since approximately 2008.

67. Commission Counsel argued that, because of Y.Z.'s back pain, smoking and diabetes, it is a reasonable finding of fact that Y.Z. would have retired at age 60 years.

68. Counsel for Y.Z. has asked me to rely solely on the evidence of Y.Z. and find that he would have worked until age 65.

69. Counsel for HRM argued that, given the effect of the Rule of 80, and given the lack of financial gain Y.Z. would have received had he worked beyond his 58th birthday on April 4, 2017, and that I should deem that Y.Z. retired as of the date of the decision

on liability, being March 15, 2018. Counsel for HRM submitted that YZ if he worked beyond his 58th birthday would have earned only $2,759.72 more per year, then if he drew is pension.

70. It is true that many individuals work beyond their financial need to do so, for social and other reasons. However, I find that there is a strong probability that Y.Z. would have retired at age 60. This is based on the evidence that I heard from other witnesses who worked in Y.Z.'s work environment. It is also based on his previous physical ailments that are cited in the medical reports, which are his issues with pain and G.I issues, and the nature of the work that he was doing. The mere physicality of working as a mechanic leads to the reasonable conclusion that at age 60, plus the minimal financial benefit of continuing to work, that it is more likely than not that Y.Z. would have retired.

Damages for Past and Future Income Loss – Impact of Private LTD Insurance on the award for Past and Future Lost Income

71. Details about Y.Z.'s LTD benefits can be found in the Agreed Statement of Facts at Exhibit 1. A complete copy of the insurance policy under which Y.Z. has received LTD benefits, which is held by HRM as a policy holder with The Maritime Life Assurance Company (the "insurer"), was entered as Exhibit 2, tab 4 (the "Policy"). Y.Z. has been receiving LTD benefits since going off work on disability, which were reduced by the amount of benefits he receives from CPP once he started receiving CPP benefits. Under the Collective Agreement Y.Z. is subject to and the Policy, Y.Z. paid contributions toward his LTD benefits while he was receiving a salary.

72. While the insurer does have a right to subrogation in the Policy, it only extends to compensation for lost income Y.Z. receives from a third party (see page 2 of the section of the Policy on LTD). The Policy contains a clause stating that the gross LTD benefits received will be reduced by the "amount of income payable to the employee under… any plan or arrangement resulting in the payment of any salary, wage, or other payment by the employer to the employee during the total disability" (see page 4 – the "Reduction Clause"). Looking at these two provisions, it would not seem that the insurer is subrogated to Y.Z. rights or recovery as against HRM, since "employer" is referred to distinctly from the term "third party". However, it would also seem that the insurer could reduce Y.Z.'s LTD benefits by any amount that Y.Z. receives from HRM as compensation for lost wages.

73. The issue for the Board is whether to deduct Y.Z.'s LTD benefits, as a form of collateral benefit Y.Z. has received as a result of his disability, from any award of damages for lost income.

74. The starting point for this analysis is a decision of the Supreme Court of Canada, ***Waterman v IBM Canada Ltd.***, 2013 SCC 70 ("***Waterman***"):

> 32 To sum up, a potential compensating advantage problem exists if the plaintiff receives a **benefit that would result in compensation of the plaintiff beyond his or her actual loss and** either (a) the plaintiff would not have received the benefit but for the defendant's breach, or (b) the benefit is intended to be an indemnity for the sort of loss resulting from the defendant's breach. These factors identify a potential problem with a compensating advantage, but do not decide how it should be resolved.

75. In other words, there must be an issue of double recovery and one of the other two criteria must be met. Because there must be an issue of double recovery, it is possible that the mere existence of a right of subrogation eliminates any "collateral benefit problem" and establishes that full damages are to be awarded with no deductions. In ***Waterman*** at paragraphs 23-24, the Honourable Justice Cromwell wrote for the majority:

> 23 Not all benefits received by a plaintiff raise a collateral benefit problem. Before there is any question of deductions, the receipt of the benefit must constitute some form of excess recovery for the plaintiff's loss and it must be sufficiently connected to the defendant's breach of legal duty.
>
> 24 For example, there is no excess recovery if the party supplying the benefit is subrogated to – that is, steps into the place of – the plaintiff and recovers the value of the benefit. In those circumstances, the defendant pays the damages he or she has caused, the party who supplied the benefit is reimbursed out of the damages and the plaintiff retains compensation only to the extent that he or she has actually suffered a loss… [Emphasis added]

76. Applying the ***Waterman*** decision to the case at hand suggests that if there is a subrogation clause, then Y.Z. should be awarded past loss of income damages without any deduction for LTD benefits. It would then be up to the Policy administrators to determine whether they want to pursue a subrogated claim. Although the subrogation right in the Policy does not appear to apply in this situation, the Reduction Clause has a similar effect. Unless the Reduction Clause expressly excludes human rights awards, then the Chair should proceed as if the Reduction Clause applies. The burden is on HRM as the Respondent to clearly establish that the Reduction Clause does not apply to avoid the award of full damages.

77. Given the ***Waterman*** decision and the language in the Policy, it would be appropriate in this instance not to deduct the LTD benefits from any damages award and rather to award the full amount of loss of income damages (if any subject to the application of apportionment as discussed above).

78. However, I must consider a recent decision by the Alberta Court of Queen's Bench regarding whether the Alberta Human Rights Tribunal should have deducted LTD benefits from an award for lost wages. In ***Schulz v Lethbridge Industries Ltd.***, 2015 ABQB 32 ("***Schulz***"), the Court holds, while considering a policy very similar to the Policy in this case (including a similar Reduction Clause), that the Tribunal erred in

not deducting LTD benefits from its award. The Court explained its conclusion in this regard:

> 40 The record before me is silent as to whether Mr. Schulz negotiated the benefits as a trade-off in arriving at salary, or whether he had the ability to opt out of the group policy in favour of private insurance. Nor is it clear whether he could have obtained private insurance at the same rate he was paying under the company's plan. Outside of the basic fact of contribution, there is nothing on the record to support a finding that the parties likely intended for Mr. Schulz to receive both LTD benefits simultaneously with damages for lost wages.
>
> 41 Rather, on the evidence that was provided, it is likely that the parties intended the opposite. Mr. Schulz was receiving LTD benefits pursuant to his employer-provided group benefits plan because he was unable to perform his employment duties. The tribunal awarded Mr. Schulz damages on the basis that the Company denied his right to work on prohibited grounds under the Act. The LTD benefits were paid because he was unable to work. This situation is similar to the one in *Sylvester*, where the Court held, at para 17:
>
> > The respondent's contractual right to damages for wrongful dismissal and his contractual right to disability benefits are based on opposite assumptions about his ability to work and it is incompatible with the employment contract for the respondent to receive both amounts. The damages are based on the premise that he would during the notice period. The disability payments are only payable because he could not work. It makes no sense to pay damages based on the assumption that he would have worked in addition to disability benefits which arose solely because he could not work. This suggests that the parties did not intend the respondent to receive both damages and disability benefits.
>
> 42 In a similar fashion, it is nonsensical on the facts before me to say that if not for the Company's discriminatory practices Mr. Schulz would have remained working, while at the same time he would be entitled to LTD benefits on the basis that he could no longer work. Like the Court in *Sylvester*, which approach was approved – although distinguished – in *IBM* (see para 90), I find that it is reasonable to infer that the parties did not contemplate that Mr. Schulz would receive both damages and LTD benefits.

79. Neither the Reduction Clause in the policy being considered nor the fact that the complainant had contributed to the policy premiums was sufficient to change the Court's decision. In fact, the reliance by the Tribunal on the latter was found by the Court to be unreasonable.

80. I find that I am not bound by the decision in ***Schulz***. My concern is that if I were to deduct the LTD benefits from the lost income claim that there is nothing to bind the LTD insurers to comply with this "reduction" that I may make based on the wording of the reduction clause. There is nothing protecting Y.Z. from the LTD insurer attempting to collect against an already reduced lost income claim. Counsel for HRM

could not advise as to whether or not the LTD insurer would be acting on a subrogated claim. Without that assurance, I choose to err on the side of caution and distinguish the decision in ***Schultz*** on that basis.

81. I am not prepared to reduce the lost income claim award and the loss of future earnings capacity award in relation to the LTD payments that have been either received or anticipated as being received into the future. I rely on the case law that has been submitted by and cited by both Commission Counsel and Counsel for the Claimant, Y.Z., that has been referred to previously in this Decision. My concern is I have no power or control over the actions of the LTD insurer. If this is of such great concern to HRM, they had every opportunity to lead evidence from the insurer to establish what if any steps it would take once Y.Z.'s award was made. further if I render an award net of LTD payments, what assurance does the Board have that the LTD insurer will not act against the reduced award?

Damages for Past and Future Income Loss – Analysis and Award

82. As pointed out in the submissions by counsel for HRM, Y.Z. is "without a doubt a broken man". It is HRM's submission that Y.Z. would be still disabled from work in the absence of any prohibited discrimination that he had experienced, based on his back issues, his other negative workplace experiences and as well his early history. Counsel for HRM submits that Y.Z.'s ability to work could have occurred regardless of the discriminatory conduct and relies on the Supreme Court of Canada's decision in ***Snell v. Farrell*** for that position.

83. As quoted above, Dr. Genest at page 42-44 of his report offered the following opinion on causation:

> …it is highly likely that YZ's current symptoms and resulting in impairment are related to his experience of negative workplace environment, trauma in that environment, and the associated sense threats to his safety. It is obviously not possible to know with certainty what an individual's mental health would be if he had, had different experiences. Nevertheless, both current information obtained from YZ and his wife during this assessment as well as extensive information from the health records tie his deteriorating psychological well-being to on-going difficulties in the workplace and to one or more event that he perceived as specific threats to his safety in the workplace. YZ's psychological dysfunction, his diagnosed disorders, his severity of the symptoms experienced as resulting in impairments associated with them would not have occurred were it not for perceived discriminatory work environment that he experienced and the sense of threat to his safety and well-being.

84. Counsel for HRM argues that some of the action perceived by Y.Z. that occurred in his workplace are not breaches under the ***Act***, and that I must evaluate the impact of the discriminatory and non-discriminatory actions which occurred to attempt to determine and evaluate the issue of causation and damages. I agree.

85. Clearly in this case there were several events which had an impact on Y.Z.'s health and pecuniary losses, both past and future, which were unrelated to any wrongful discriminatory acts.

YZ's Medical Records and Work History

86. The medical records suggest that there were issues with Y.Z.'s mental health when he worked under Joey Forest in 1996. Dr. Rosenburg in his report refers to notes that were contained in the family physician's report which state that Y.Z. in 1996 was suffering from depression and anxiety.

87. Evidence was led, which established that there were on-going issues with Berkley Gallant, and in particular the nature of Y.Z.'s work assignments and the fairness of the work assignments.

88. The investigation/mediation that was conducted by Chris MacNeil had a significant negative impact on Y.Z. However, based on the evidence before me there is no evidence to support that Y.Z.'s horrible reaction to the conclusion of the mediation was a result of a violation of an enumerated ground of discrimination under the ***Act.*** It occurred because of Y.Z.'s perception of how he was treated by Berkley Gallant in the workplace. There is no evidence to support that Berkley Gallant's assignment of work within the workplace was racially motivated. There is no evidence to support the finding that Chris MacNeil's conduct of the mediation was discriminatory to YZ.

89. Y.Z. speculated in his evidence that R.S. intentionally drove head first into an oncoming vehicle. At the time of R.S. death YZ was back to work. The mediation with Chris MacNeil had occurred prior to the death of R.S.

90. Shortly after the May 27th, 2004, MacNeil mediation, and the related return of Mr. Gallant to the brake shop, YZ left work on a 2-year medical leave of absence. Dr. Dick Jellema, a doctor of psychiatry associated with Dalhousie University, wrote a medical report concerning Y.Z. on March 17th, 2006. In his letter states that he had saw Y.Z. for several sessions and "worked on changing at some of his perspectives on this incident and examined how his patient influenced his presenting symptoms". Dr. Jellema further stated:

> …I feel that provided this situation in his workplace is resolved, he would go back to work without restriction from psychological point of view.
> …YZ did miss several appointments that were scheduled, and we have not rescheduled any further appointments.

91. Mark Russell is a psychologist who worked with YZ. In a letter dated September 19th, 2006 at page 24 he stated:

> …With the learning and application of afore mention strategies, YZ became less anxious about his plan to return to work. Thus, when he actually returned, he did not experience anxiety to degree which was problematic.

92. Mr. Russell then further stated:

> …An additional factor in YZ's rescued anxiety was the fact he had taken steps to address his concerns regarding how he was treated at work. Thus, he felt he was returning to a safer environment, both physically and emotionally.

93. At the time the letter was written, Mr. Russell further stated:

> …as you are aware although Y.Z. has made a successful return to work, it is now almost a full-time hour, he did wish to have additional psychotherapy appointments available in case a need arose.

94. Dr. Graham, YZ's family doctor, saw him after the death of R.S. He wrote a letter to HRM, dated February 11th, 2007, and stated:

> …you will be aware that YZ has made an attempt to return on a gradual basis, with the program of increasing hours. He did appear to be doing reasonably well with this program until recently. He has seen me on 3 occasions within the past month and has described a reoccurrence of a fairly sever problem with anxiety and likely depression. This relates to problems he's having with co-workers, and which is making it very difficult for him to function at work.

95. Dr. Graham wrote the following in his letter dated October 21, 2007, at page 42:

> …YZ did progress to a point where he was able to begin working 8 hours a day, 5 days week from October 23 until January 19, 2007. During this time, he was still obliged to be on modified duties, having to avoid heavy lifting and other overly stressful activities. During the period of October 23, 2006 until January 19, 2007, I believe this Human Rights inquiry was on-going. During this time also, I provided notes to the employer that I was in agreement with the work scheduled then in place.
>
> ...Finally, during this time, YZ informed me that, since he had returned to full-time duties, his LTD benefits had been discontinued. Given that YZ continued to have intermittent back pain with associated left sided sciatica, I felt the modified work schedule was appropriate. During a visit on January 2, 2007, he described some chest tightness and nausea. An EKG was done, which was normal.
>
> … I next saw him January 23, 2007, when he reported having developed recurrent migraine and dizzy spells. He had similar problems in the past, when he first went off work. There have been further problems at his workplace, where he said his co-workers wanted him out of the shop. He also reported that although I had supplied documents putting him on light duties, his supervisors appeared to be unaware of this. He had in-fact discontinued work because of illness on January 19.

96. An assessment completed by Capital Health, mental health program dated December 4, 2007 which was written after YZ's suicide attempt, states:

> …as well he endorses symptoms most all of (P.T.S.D.) on a background of sensitive, anxious nature given his early life experiences.

97. Y.Z.'s suicide note was entered as an exhibit. In it he reflected, "I hoped it wouldn't come to this, but I knew they weren't going to pay me, refuse my medical reports for both doctors".

98. In the doctor's notes of the family doctor, Dr. Graham, there was little reference to any on-going workplace issues for Y.Z. prior to the arrival of Mr. Buckle or R.S. at the workplace. However, Y.Z. was experiencing significant health issues. Y.Z.'s back problems started as early as 1993. He was experiencing rectal bleeding at least as early as 1986. He was experiencing acute lumbar pain in 1988. In 1995, there was a cat-scan conducted. In January of 1996, YZ was suffering from dizzy episodes. In December of 1995, he was complaining of neck pain and in notes made in June of 1996, that neck pain apparently was still on-going. In September of 1998, the doctor's notes state that Y.Z. was experiencing from headaches and stress.

99. The note on the doctor's file of August 1, 2006, notes that Y.Z. returned to work, and did okay. The note for September 5th, 2006 and October 6th, 2006 note a continuation of back issues. The October 24, 2006, note states, that Y.Z. still doing light duties but so far, the return "seems to be doing okay". The note of January 2, 2007, states "doing okay. Remaining on modified duties. Still having trouble lifting. Working 8 hours, 7:00 am - 3:00 pm".

100. The next notation on the family doctor's file is January 23, 2007, and it states, "migraine, dizzy spells".

101. The Disability Case Manager wrote to Counsel for Y.Z. on November 16, 2007. In that letter it is stated:

> …he advised that he the reason for going off work was due to the problems that were building up from the mediation in 2006 with HR representative, Mr. Paul Beauchamp. As well, he reported that a supervisor and his foreman, Mr. Berkley Gallant, advised him that co-workers were complaining about him continuing on light duties and that <u>if</u> he continues to do so, <u>they</u> didn't want him in the plant. YZ advised that Mr. Gallant stop giving him light duties just before Christmas.
>
> YZ advised that the biggest obstacle in returning to work were the black outs and the dizzy spells which he was getting from the work-related issues. He also advised that as he was kicked out of the facility as co-workers were

> complaining because he was doing light work it was an obstacle as well. I was unable to get more details regarding this as YZ revoked his authorization to communicate with his employer regarding these issues.
>
> … I had advised YZ that I spoke with Mr. Hartland, manager, on March 14th, 2007 (before his consent was withdrawn), and he had advised that he was unaware of any problems and that the union contacted him to see if he would work in the Thornhill Plant and management approved his transfer. I asked the insured about transferring to the Thornhill Plant, he advised that it wouldn't matter if he transferred to another plant, as it was all the same people anyway and nothing had changed.

102. Mark Russell, psychologist, in a letter written to counsel to Y.Z., dated September 11th, 2007, stated:

> …although Y.Z. and I addressed the fore mentioned concerns in psychotherapy during this time, the principle factor that appears to have resulted in an initial successful return to work was the fact that an arrangement was worked out with respect to the physical demands of his position. Additionally, his concerns regarding possible harassment were addressed to his satisfaction-at least initially. Upon his return to work, the psychotherapy was no longer paid for by the ManuLife.
>
> …this led to the second set of appointments which I had with Y.Z. The second set of appointments were not covered by ManuLife but initially paid for by Y.Z. and then by HRM occupational health. The first of these two appointments were on December 7, 2006 and January 8th, 2007. At that time, Y.Z. was functioning relatively well and was working at his job. However, he continued to experience the stress related to on-going distress related to the on-going process of addressing his work-related concerns. At our next appointment on February 5th, 2007 he informed that he had stopped going to work due to circumstances at work and their emotional impact on him.

Impact of the contents of the Medical Records and Evidence on Causation

103. Y.Z. testified at length as to his treatment by Walter Dominix and how it negatively impacted him. I dealt with the Dominix years in the previous award. There is no question that his work experience with Mr. Dominix had a negative impact on Y.Z. However, there is no evidence that Mr. Dominix's behavior was in violation of the ***Act.***

104. Y.Z. had ongoing conflict in the work place with individuals such as Joey Forrest and Scott Sears. I have already discussed his ongoing issues with Burkley Gallant, as well as the investigation/mediation of Christopher MacNeil.

105. The other two events which occurred, which are not directly linked to workplace incidents but which I believe had a detrimental impact on the mental health of Y.Z., were the death of R.S. and the denial of Y.Z.'s LTD benefits.

106. However, the amount of distress R.S.'s passing created for Y.Z. is not something that was caused by any discriminatory act. Neither was the impact of the mediation or the loss of the LTD benefits. HRM cannot be held responsible for the impact of those events on Y.Z. Further, Y.Z. also had some other health issues, which are documented in the medical reports, which may have contributed, as well, to his inability to work, such as recurring back pain and gastrointestinal issues.

107. Based on the above medical records concerning other physical issues that Y.Z. was suffering from, and the impact of the death of R.S. and the mediation, the loss of the LTD benefits, as well as Y.Z.'s perceived issues with in the work place, and in particular with Burkley Gallant, I am reducing the Ms. Gmeiner's calculations of Y.Z.'s award for loss of past and future income by 40%.

Mitigation

108. Furthermore, regarding the issue of mitigation of damages, on March 14, 2007, Y.Z. had the option to agree to a transfer to the Thornhill Facility. This would have removed him from the work environment which he perceived as being so detrimental to his health. Y.Z.'s response to the question as to why he didn't take the transfer was to state, that he didn't feel that he had to because the people who were causing the problems were the ones who should be forced to leave and not him. Cathy Martin in her evidence stated that she took the option to relocate to the Thornhill Facility to leave the poisoned work environment behind.

109. Y.Z. has an obligation to take reasonable steps to mitigate his work situation. Evidence was led to establish that the transfer to the Thornhill Facility would not result in the change of union or change in seniority. It represented to Y.Z. the opportunity for a fresh start in a new work environment. Despite the perceived wrong doing to Y.Z. in his workplace, and only some of which are linked to the violation of the ***Act***, Y.Z. has a legal obligation to take steps to improve his situation. Y.Z. had an obligation to give the Thornhill Facility a try. Given everything about his work life experience in his workplace, one wonders why he would not have jumped at the opportunity to get out of the work environment that he was in and to start fresh elsewhere without a loss of pay, loss of seniority or a change in his union.

110. I find that Y.Z. failed to mitigate his losses by not, at least, exploring the option of relocation and making an informed decision about whether it would benefit him.

111. I reduce Y.Z.'s award for loss of past and future income by a further 10% based on a failure to mitigate his damages.

112. Therefore, the total reduction in Y.Z.'s claim for past and future loss of income is a total of 50%.

113. Based on Ms. Gmeiner's most recent calculations in her July 3,2018 report, and my above decision on the relevant issues, I will leave it to the parties to mutually agree on figures for past and future income loss, and I will remain seized of this matter in the event the parties cannot reach such an agreement.

Cost of Future Care

114. Special damages can also be awarded for the cost of future medical expenses, which was done in ***Mahmoodi v Dutton,*** 1999 CarswellBC 3088 (BCHRT). $5,200.00 was awarded for future counseling to the complainant, who had suffered emotionally as a result of sexual harassment (the award was calculated at twelve months of bi-weekly sessions costing $100.00 each in lieu of evidence as to cost).

115. In the present case, evidence is before the Board, in the form of a report from Dr. Genest as to the cost of future treatment. Dr. Genest was brought back on April 18, 2016, to testify regarding a supplementary report (Exhibit 14). The supplementary report set out Dr. Genest's recommendations for the treatment of Y.Z. and included an estimate as to cost. I accept the recommendation for treatment and find that the cost of treatment in the amount of $43,350.00 is reasonable. I also accept and rely of the evidence of Dr. Genest who stated that the level of therapy required for Y.Z. to address his mental health issues are not readily available in the public mental health system. I find that it is not reasonable to expect that Y.Z. would access counselling through the health plan of HRM, because of his ongoing issues and fear of encountering the employees of HRM.

116. Counsel for HRM argued that the cost of future care award should not be paid directly to Y.Z., and that the Board should order that the Respondent pay directly to the doctor of Y.Z.'s choosing for the treatment provided. The invoices for treatment would be submitted by the psychologist directly to the clerk of the municipality.

117. Such an approach is a paternalistic one. Y.Z. can manage his own financial affairs, pay his own bills and as well decide when, or how, he pursues his therapy. I'm operating on the assumption that Y.Z., based on his evidence the Board has heard, will take every opportunity to seek treatment to improve his personal situation. Neither he, or his health care providers, should not have to deal in any way administratively with anyone connected to HRM to secure payment for his treatment.

118. However, the above award for future care costs is also subject to a 50% reduction based on my above analysis and decision on the extent of the linkage between the acts of wrongful discrimination and past and future wage loss, and the issue of mitigation.

119. Therefore, the net award for the cost of future care is **$21,675.00**.

Public Interest Remedy

120. The last question that I must address, is whether the Board should intervene in the operation of the workplace itself by ordering a public interest remedy. It is submitted by Counsel for HRM that in the present case HRM has acted extensively to change the culture of the Transit machine shop, and that race based discrimination, if it exists beyond perception, is no longer an issue that needs to be addressed by this BOI. In support of the efforts to address the machine shop culture HRM called as witnesses Mike Dunphy, Helga Wolf-Billard, Laughie Rutt, Wendy Lines.

121. Counsel for HRM submits that in relation to the Workplace Rights Complaint, Metro Transit brought in an outside investigator, then Deputy Chief of Police, Christopher MacNeil to take charge of the investigation. Counsel for HRM further submits that Mr. MacNeil supervised a very in-depth examination into the fairness of the distribution of the work in the brake shop and the conclusion was that the work was not being distributed unfairly. Mr. MacNeil realized that there was a personnel issue between Y.Z. and Mr. Gallant and concluded that the best way to resolve it would be to engage in some sort of mediation, which he undertook.

122. Counsel for HRM points out that in response to the concerns raised by Y.Z. and, as well, Mr. Buckle and R.S., HRM assigned Della Risley to do an in-depth investigation as to the issues arising in the machine shop.

123. Counsel for HRM submitted that, subsequent to the incident in which Mr. Maddox threatened R.S., HRM retained the services of Michael Dunphy, then an outside consultant to provide diversity training to the entire machine shop. Mr. Dunphy also gave evidence as to his involvement together with Charla Williams in the development of the Code of Values and Workplace Rights Policy for HRM. That policy laid out HRM's commitment to having workplace that was free of harassment.

124. Laughie Rutt, who is employed as a Diversity Adviser at HRM, gave evidence as to the current training on diversity in the work place and the establishment of the Racially Visible Employees Caucus to provide a conduit for the concerns from African Nova Scotian and other visible minority employees. Mr. Rutt admitted that this group would not be open to Y.Z. if he was still working, because he was not a racially visible employee.

125. Wendy Lines has been the manager of the Bus Maintenance Department at HRM since January 2014 and gave evidence explaining the current state of the machine shop and the efforts of Metro Transit to improve the culture of the workplace. This includes hiring managers from outside HRM and mandatory training of managers in dealing with diversity issues.

126. Ms. Lines gave evidence pertaining to various documents on training and policies at HRM that were entered as Exhibit 60. She stated that when she started at HRM she did a workplace assessment through survey and conversations to "get an assessment of what the culture was like with respect to each of our department, or not our department, each of our locations, Burnside and the Ragged Lake facility. And to boil down what the key areas of focus should be in terms of not only changing culture in the department but improving the quality of work life for employees". Resulting from this was an expression of interest that was put out to employees to join a joint working committee (see Exhibit 61).

127. Ms. Lines testified that Peak Experiences was hired to undertake an assessment of culture at Halifax Transit, documents related to which were entered as Exhibit 62.

128. Ms. Lines also testified that all managers at HRM have a year in which to take mandatory training with respect to "managing people in a unionized environment, substance abuse, occupational health and safety training, workplace violence policy training, workplace rights training, our behaviors, value and conduct which relates to ethics and our values with respect to how we all behave as employees of HRM. Additional training has been offered since she started in her position.

129. Helga Wolf-Billard has been the Health and Safety Manager of Human Resources Department of HRM since 2013. Ms. Wolf-Billard confirmed HRM's workplace violence prevention statement and testified that she was involved with the revision of the document to conform with the regulations, and also in the implementation of the statement. Ms. Wolf-Billard testified about efforts to train managers in addressing workplace violence.

130. It is submitted by Commission Counsel that the Workplace Assessment that was completed at Metro Transit (now Halifax Transit) in 2015 is evidence of the need for a public interest remedy, if the Board finds that HRM is not already taking appropriate action (Exhibit 62, tabs 4 and 5). This assessment showed that Halifax Transit's Ilsley Avenue facility, in particular, remained rife with dissatisfaction regarding respect in the workplace and favoritism, among other areas. At that time, 53% of employees surveyed at this facility indicated dissatisfaction regarding "being treated with consideration and respect", and 62% agreed there were favorites in their work unit. These numbers become even starker when the employees surveyed at the facility are broken down into maintenance and hostlers rising 61% dissatisfaction and 66% agreement respectively. Of the employees who indicated dissatisfaction on being treated with respect and consideration, "bullying, racism, [and] intimidation" were some of the examples of the type of disrespect being experienced. 75% of the employees surveyed at the Ilsley Avenue facility disagreed that "the organization promotes fairness amongst all employees".

131. Commission Counsel submitted that there is an ongoing relationship between HRM and the Commission, and that HRM has been cooperative with the Commission in attempting to address the work place environment subsequent to the events which gave rise to this complaint. Commission Counsel submits that the Commission will ensure ongoing education and assistance is provided to HRM, without the necessity of a public interest order.

132. Counsel for YZ is seeking a public interest remedy which would mandate the hiring and maintenance for 50 years of 25% "non-white Caucasian employees" by HRM. I do not have jurisdiction to make such an order. Further such an order does not address diversity issues for individuals who possess other protected characteristics.

133. The point of a public interest award should be to attempt to address historical wrongs. There has been a lot of work done by HRM to try and address the work culture. Frankly, I do not know what further training can be done in the current workplace that is not already in place to promote diversity and the fair treatment of employees. I heard a lot of evidence about the training requirements for both employees and managers, and how these training requirements have been substantially upgraded since the days that Y.Z. was employed in that work place. What troubles me the most is the finding of the Workplace Assessment completed in 2015. It still does not show a great picture of what that workplace is like.

134. Regardless, I do not know what a further public policy remedy will achieve here. It is my hope that my monetary award will send a clear message to HRM and its supervisors of what their legal obligations are under the ***Human Rights Act*** to investigate and address potential violations under the ***Act***.

135. Furthermore, as noted above, in the decision of the Supreme Court Canada in ***Moore v. BC*** [2012] 3 SCR 360, the Court commented at paragraphs 55-70 on remedies that are too "remote" from the scope of a complaint. In that case the remedies in question expanded beyond strictly compensatory and remedial issues for the complainant into the realm of orders and supervisory remedies which would be more appropriately considered in a complaint of "systemic discrimination." In my opinion the award of any "public interest" remedies in this case would stray beyond the remedial parameters established in ***Moore***.

Summary of Damages Award

136. My decision on damages is summarized below:

General damages for Y.Z.	$ 80,000.00
Prejudgment interest at 2.5% from	
July 13, 2006 to April 13, 2019	$ 25,650.00
Total amount of general damages for Y.Z.	**$105,650.00**

137. I calculate YZ's spouse's general damages claim for pain and suffering as follows:

General Damages	$25,000.00
Prejudgment interest at 2.5% from	
July 13, 2006 to April 13, 2019	$ 8,015.00
Total amount of general damages	**$33,015.00**
The award for Cost of Future Care is as follows:	
Cost of Future Care	$43,350.00
50% reduction	$21,675.00
Total amount awarded for cost of future care	**$21,675.00**

138. The award for Past and Future Lost Income is as follows, and is based on the calculations provide by Ms. Gmeiner in her July 3, 2018 report, which calculates past lost income to March 15, 2018, which was filed as part of the closing submissions, and with a retirement at age 60:

Net Past Lost Earnings with interest and 250% Mortality and 250% disability	$725,457.00
Present Value of 2018 signing bonus	$ 987.00
Loss of Future earning capacity, retirement At age 60, 250% Mortality and 250% disability	$ 75,413.00
Net Loss of Future Pension Income with retirement At age 60, 250% Mortality and 250% disability	$ 64,297.00
Total Past and Future Lost income Claim	$866,154.00
Reduction by 50%	$433,077.00
Total award for Past and Future Lost Income	**$433,077.00**

139. As mentioned above, based on my findings I leave it with the parties to update the calculation of the award for past and future pecuniary losses, and the specific calculation of pre judgment interest on general damages, set out above. The calculations in Ms. Gmeiner's report need to be updated. If Counsel cannot agree to the updated numbers and the quantum of pecuniary damages or any pre judgment interest calculations, I retain jurisdiction to make a specific decision and calculation. I also retain jurisdiction to correct any mathematical errors I may have made in this award.

The Decision on the Application for the addition of other Parties to the Complaint

140. Counsel for HRM made an application to have certain employees added as individual parties to the Board of Enquiry. Those individuals retained counsel, and evidence was filed, as well as briefs. I rendered an oral decision denying the motion of counsel for HRM. I gave a brief oral decision. I will review the transcript, and if I believe there is a need for a further written decision, in will endeavor to render it by June 30, 2019.

Dated at Kentville, Kings County, Nova Scotia, this 7th day of May 2019.

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Lynn M. Connors, QC
Board of Enquiry Chair