

IN THE MATTER OF THE HUMAN RIGHTS CODE
OF BRITISH COLUMBIA

AND

IN THE MATTER OF A COMPLAINT BY D. D.
AGAINST HER MAJESTY THE QUEEN IN RIGHT
OF THE PROVINCE OF BRITISH COLUMBIA

REASONS FOR DECISION

DATE OF HEARING: May 4, 1976 and
May 14, 1976

PLACE OF HEARING: 4211 Kingsway, Burnaby, B.C.
and 1620 West 8th Avenue,
Vancouver, B. C.

BOARD OF INQUIRY: Penny Bain
Carolyn Gibbons
Mohan Jawl

APPEARANCES: George Fuller - Counsel for
the Respondent
Gerald Green - Counsel for
the Complainant
Bill Black - Counsel for the
B.C. Human Rights Commission

EFFECTIVE DATE OF DECISION: July 14, 1976

These proceedings arise out of allegations by the complainant that he was refused employment by the respondent without reasonable cause, contrary to section 8 of the Human Rights Code of British Columbia. In particular, it is alleged that the complainant was refused employment as a counsellor to young offenders because of his own criminal record. The charges are aimed at the British Columbia Corrections Service who, it is alleged, acting in the person

of Allen Palmer, first offered the complainant employment and later refused it without reasonable cause. The respondent denies the charges and states that quite apart from the question of reasonable cause and the suggestion of discrimination, at no time was the complainant either offered or refused employment by a person with authority to act on the respondent's behalf.

The complainant has an extensive criminal record dating back over 20 years during which period he served time in penal institutions on a number of occasions. He was last released from prison on June 21st, 1974, and placed on supervised probation for two years. He was assigned to the New Westminster District Probation Office, and during the time material to this inquiry, his probation officer was Beverly Rousse.

Ms. Rousse was assisting the complainant in his efforts to find employment. He visited her at least once a month and during one such visit she suggested that he might be suitable for employment as a counsellor to young offenders. The complainant reacted with enthusiasm and Ms. Rousse indicated that she would keep her eyes open for an appropriate opportunity.

Sometime afterwards, Ms. Rousse happened to meet Allen Palmer, a consultant with the Planning and Development Division of the Corrections Service. Mr. Palmer was thought to have special skills in the area of employment counselling and he

was engaged in August, 1974, for a period of six months as the sole participant in an experimental project aimed at assisting young probationers, parolees, ex-inmates and presentence people in finding employment. Mr. Palmer was expected to find employment opportunities and to promote employment motivation through counselling. In addition, he was to report on the need for and the potential effectiveness of a permanent program based on his pilot project. A decision on the permanent program was to be made in April, 1975, following the expiry of the pilot project.

Mr. Palmer was not supervised in his day-to-day activities. He accepted referrals from probation officers and the work generated by these referrals was more than sufficient to keep him fully occupied. He had difficulty in finding time to deal with the experimental and organizational aspects of his project, but he did engage in some preliminary recruiting of persons he would consider hiring if and when the permanent program was approved. He anticipated approval and was confident that he would be appointed the director of the new program.

Mr. Palmer worked out of the Vancouver District Probation Office, but he dropped in to the New Westminster Office to meet Ms. Rousse and explain his project. The complainant came up in the conversation during a discussion of persons on Ms. Rousse's case load. According to Ms. Rousse, Mr. Palmer expressed an interest

in meeting the complainant, not as a person in need of counselling, but as a person who might be suitable for employment as a counsellor.

After a couple of unsuccessful attempts, a meeting was finally arranged and took place in November, 1974, in Ms. Rousse's office. Mr. Palmer explained his project in detail to the complainant. The complainant's qualifications and his background, including his criminal record, were discussed. Mr. Palmer was favourably impressed. There is little doubt that the meeting was a job interview, but despite the general agreement as to the nature of the meeting and the content of the discussion, the three participants gave conflicting evidence in identifying the particular employment under discussion and they came away from the meeting with different impressions as to its outcome.

According to the complainant, Mr. Palmer offered him a job as a counsellor with the Corrections Service and he was to start work on the day following the meeting. Mr. Palmer's evidence is that any talk of employment was with reference to the mere possibility of employment if and when the pilot project was approved and funded on a permanent basis. He denies making any commitment whatsoever to employ the complainant, and while he could not specifically recall advising the complainant of the contingent nature of the program, it was his invariable practice to do so during such preliminary interviews. In answer to the complainant's

contention that he was to start the next day, Mr. Palmer states that the only thing that was to start the next day was an effort on his part to further familiarize the complainant with the sort of work he was doing by having the complainant accompany him to some of his appointments. Mr. Palmer recalls suggesting to the complainant that he improve his qualifications for a counselling position by engaging in certain volunteer programs and he offered his assistance in making the necessary arrangements.

Ms. Rousse was present during most of the meeting. Her impression was that the employment under discussion involved a job as an assistant to and an employee of Mr. Palmer in his pilot project. Her evidence does, however, support the notion that there was no offer of employment during the meeting. Indeed, she stated that both she and the complainant were pessimistic following the meeting. Her evidence also supports Mr. Palmer's evidence as to the suggested participation in the volunteer programs.

The question whether or not the complainant was offered employment during the meeting is, in the opinion of the Board, merely incidental to the primary issue in these proceedings, namely, whether the complainant was refused employment without reasonable cause. The complainant alleges that this occurred during a telephone conversation between himself and Mr. Palmer on November 19th. Again there is a conflict of evidence. According

to the complainant, he was told that the matter of his employment was raised before a superior authority in Victoria and it was decided that he would not be hired because of his criminal record. According to Mr. Palmer, he merely advised the complainant that he would not be allowed to participate in certain volunteer programs because he was still on probation, and that this decision was made by those in charge of the programs and not by himself or anyone else connected with the Corrections Service. He invited the complainant to accompany him on an appointment but the complainant declined the invitation. There was no further contact between the complainant and Mr. Palmer. The complainant was very disappointed and lodged his complaint under the Code on December 21st, 1974. Mr. Palmer's pilot project terminated in April, 1975, and the permanent program was never funded.

After reviewing all of the evidence, the Board is of the opinion that the complainant misunderstood the outcome of the November meeting and that this misunderstanding led him to the mistaken belief that the subsequent refusal related to employment rather than to his participation in the volunteer programs. We are of the view that there was no offer of employment made at the November meeting and we accept Mr. Palmer's account of the subsequent telephone conversation.

Mr. Palmer was struggling with a difficult workload. He had need of an assistant. On the other hand, his contract with

the Corrections Service left little room for expansion of the project. He received \$50.00 per day for his services, and he dismissed as ridiculous the suggestion that he might have considered paying a portion of his remuneration to the complainant in return for his services as an assistant. No request was made to the Corrections Service for more funds to hire an assistant. We can only conclude that Mr. Palmer was not thinking in terms of immediate employment during the meeting when he was alleged to have offered a job to the complainant. We are not totally satisfied, however, that he was only thinking of possible future employment as he maintains. We suspect he may have been attempting to secure a part-time assistant for free by suggesting that the complainant engage in volunteer work to further qualify himself for a counselling position. On two occasions, Mr. Palmer invited the complainant to accompany him on his rounds, although on the first occasion Mr. Palmer failed to show up and on the second occasion the complainant declined the invitation.

It is our opinion that Mr. Palmer acted carelessly throughout this episode. His failure to clearly explain his intentions at the meeting was the root of the confusion which subsequently prevailed. How clearly he conveyed his message during the subsequent telephone conversation is a matter of conjecture, but there is no doubt that he was misunderstood by the complainant. On the other hand, Mr. Palmer's conduct, although reprehensible, does not in our

opinion constitute a contravention of the Code. The complainant's disappointment and his understandable bitterness resulted from confusion rather than discrimination.

In view of our findings, it is not necessary to determine whether responsibility for Mr. Palmer's actions could, in the circumstances, be attributed to the respondent. There was, however, considerable evidence and argument directed to this issue and the Board wishes to express its views on the question. Mr. Palmer had no actual authority to employ or refuse to employ anyone on behalf of the respondent. We strongly suggest that he held himself out as having more authority than he actually had. The Corrections Service, through a surprising lack of supervision, participated in this holding out, but to the limited extent of allowing Mr. Palmer to suggest a closer connection to the Service than he actually had as a consultant. They did not hold Mr. Palmer out or knowingly allow him to hold himself out as having authority to employ or refuse employment on their behalf.

It might also be noted in passing that there was little evidence to suggest the existence of an employment policy in the Corrections Service which discriminated against persons with criminal records other than the complainant's version of his telephone conversation with Mr. Palmer. A number of senior officials with the Service gave evidence indicating a policy favouring the

hiring of persons with criminal records and acknowledging the importance of employment opportunities in reducing the rate of recidivism. On the other hand, it was also admitted that there was "a lot of thinking, but very little doing" in the area of hiring ex-convicts.

During the course of the hearing the Board made a number of orders which we now wish to record. Firstly, counsel for the complainant made an application under section 16 of the regulations that the hearing be closed to the public and that the identity of the complainant be concealed. The application stemmed from a concern that publicity as to the complainant's identity and his criminal record would adversely affect his future prospects for employment. The Board made an order that the hearing be closed to the public, that no person present at the hearing shall disclose to the general public or to the news media any information coming before the hearing pertaining to the identity of the complainant and that the style of cause be amended so as to describe the complainant by the initials "D. D.". The Board's decision was based on our interpretation of section 16 of the regulations, the spirit and intent of the Code as to procedural matters and the fact that we could not see how our ruling would prejudice the respondent in the presentation of its case or seriously offend any compelling notion of public policy.

A further order made by the Board arose out of an objection made by counsel for the respondent to the introduction of certain evidence through Ms. Rousse who appeared as a witness on behalf of the complainant. Ms. Rousse made a practice of making notes after each interview with a person on her case load. On a periodic basis, she made a summary of her notes recording information which she considered important to case management, and having done so, she destroyed the original notes. Counsel for the complainant sought to introduce in evidence the summary relating to the complainant or, alternatively, to have Ms. Rousse read from parts of the summary. Counsel for the respondent objected on the grounds that the summaries were not original notes, and in any event, the evidence was privileged and its introduction would impair communications between probation officers and persons on their case loads.

The Board made an order allowing Ms. Rousse to read into evidence those portions of her summary which related to the events which transpired during the November meeting. As to the first objection raised by counsel for the respondent, that the notes were not made immediately following the meeting but later in the form of a summary of the original notes, we consider this objection as one going to the weight to be attached to the evidence rather than to its admissibility. The question of the accuracy of the original notes and the possibility of distortion during transcription

into summary form are two factors which we considered in evaluating the evidence.

As to the second objection, it is of interest to note that the claim of privilege was asserted by the respondent and not the complainant who might have an even greater interest in preserving the confidentiality of his communications with his probation officer. Moreover, the privilege was claimed only in connection with the introduction of the summary and not the other evidence given by Ms. Rousse concerning her dealings with the complainant. The Board appreciates that disclosure of private communications between probation officers and their clients or of evaluations made by probation officers of their clients might, in some circumstances, be injurious to the public interest. The argument for exclusion of such evidence is equally compelling whether the communications or evaluations are recorded in writing or otherwise. The Board's ruling, however, was specifically restricted to notes of the events which happened at the meeting. It did not extend to Ms. Rousse's evaluations of the complainant or to any private conversations. We do not feel that our ruling violates the confidential nature of the relationship between Ms. Rousse and the complainant.

Near the conclusion of the hearing counsel for the respondent asked the Board to order the complainant to pay the respondent its costs, pursuant to the authority vested in the

Board under Section 17(3) of the Code. We do not feel that this is a proper case for costs and accordingly no such order will be made.

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ORDER

This matter having been heard by this Board of Inquiry on May 4th and 14th, 1976, pursuant to a Reference by the Minister of Labour under section 16 of the Code, in the presence of Counsel for the Human Rights Commission, the Complainant and the Respondent, upon reading the Complaint and hearing the evidence adduced and what was alleged by Counsel, it is hereby ordered that the allegation be dismissed.

Mohan S. Jawl

Mohan S. Jawl
Chairman