

APRIL 1979

HUMAN RIGHTS BOARDS OF INQUIRY

HUMAN RIGHTS CODE — BOARD OF INQUIRY DECISION

Kerrance B. Gibbs
President
Surrey Teachers Association
and
Surrey Teachers Association
(Complainants)

Robert J. Bowman, Director of Community
and Employee Relations,
School District #36 (Surrey)
and
Board of School Trustees,
School District #36 (Surrey)
(Respondents)

- and -

HUMAN RIGHTS CODE — BOARD OF INQUIRY DECISION

Kathleen Ruff, Director, Human Rights Code
A party pursuant to Section 16(3) of the
Human Rights Code of British Columbia

- and -

Board: Sholto Heberton

A Human Rights Board of Inquiry was appointed to hear the complaint of Kerrance B. Gibbs, President, Surrey Teachers Association, and the Surrey Teachers Association, that the policy of School District #36 (Surrey) to refuse sick leave benefits to employees absent from employment for sickness caused by or aggravated by pregnancy is discriminatory on the basis of sex and without reasonable cause.

Counsel for both parties agreed that normal maternity leave is not the question in this complaint. It was also agreed that "It is the policy of the Respondent Board of School Trustees of School District #36 (Surrey) to allow employee teachers to take advantage of their accumulated sick leave benefits for all forms of physical or mental illness so certified by a duly qualified practitioner save and except for physical or mental illnesses caused or aggravated by pregnancy."

Counsel for the Human Rights Branch and the complainant argued that

"Women should not be granted equal treatment in the work force only on the condition of and at the price of denying their role as mothers. If only the woman who never becomes pregnant is treated equally, then women as a class have been denied their full humanity . . . It is the same as saying to women — if you want to be equal, then you must be the same as men and not have babies. That is not equal treatment and equal respect

for every person regardless of sex. If women who are pregnant are not to be treated as full and equal human beings, women as a class are not equal and are on an inferior footing in the work force . . .

. . . Women should have the freedom to choose to become mothers without being penalized therefor or being treated as person with less rights and protections in the work force . . ."

A number of decisions of American and Canadian courts were reviewed, finding considerable inconsistencies in whether discrimination related to pregnancy constitutes sex discrimination. This Board of Inquiry determined "But insofar as the *General Electric* and *Bliss* cases decide that the denial of the benefits there involved does not constitute sex discrimination, I agree with those decisions."

Nevertheless, the Board stated "I conclude that the complainant in this case should prevail because the policy of the respondent violates the reasonable cause provisions of Section 8 of the Rights Code." In determining that pregnancy is a status protected by the concept of reasonable cause in Section 8(1) of the Human Rights Code, the Board stated

"Pregnancy is one of those conditions where there has been a pattern of conduct by which employers made broad categorizations without regard to individual circumstances. Many employers developed rules requiring pregnant women to stop work and to lose

various other benefits in addition to present salary as a result of pregnancy and notwithstanding the effect of that pregnancy on that particular woman. That situation presented a classic case of what human rights legislation is all about. At the core of human rights legislation is the belief that people should be treated on their own merits and not by a categorization process that bears no relationship to the employment decision at hand . . . I conclude that pregnant women should be entitled to the reasonable cause protections

established in Section 8(1) of the Rights Code.

The Board ordered that the Respondent cease and refrain from "denying employee teachers the right to draw on accumulated sick leave benefits when the School Board is advised that the employee's illness, whether physical or mental, which occasions the absence is caused or aggravated by pregnancy."

As a result of this decision, a teacher who had been sick while pregnant was compensated retroactively in the amount of \$3,609.00.

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HUMAN RIGHTS CODE — BOARD OF INQUIRY DECISION

Elizabeth Garnett
(Complainant)

- and -

Kompleat Industries Incorporated
Carrying on business under the
form name of Kompleat Janitorial
Services
(Respondent)

- and -

Kathleen Ruff, Director, Human Rights Code
A party pursuant to Section 16(3) of the
Human Rights Code of British Columbia

Board: Josiah Wood

A Human Rights Board of Inquiry was appointed by the Minister of Labour to hear the complaint of Elizabeth Garnett alleging that Kompleat Industries Inc., carrying on business under the firm name of Kompleat Janitorial Services Ltd., refused to employ her for heavy duty janitorial work because of her sex.

On June 29, 1978 preliminary objections by Counsel for the Respondent and applications for amendment to the complaint by Counsel for the Complainant were heard by the Board. In its decision, the objections were not upheld.

With respect to the proposed amendments the Board recognized that the Respondent suffered no prejudice as a result of the proposed amendment, and that Counsel for the complainant sought to name as the Respondent only the correct corporate entity. Given that the Respondent had apparently changed the name from Kompleat Janitorial Services Ltd. to Kompleat Industries Incorporated only one month before the complaint form was dated and signed, that the Respondent did not notify the Human Rights Branch of the error prior to the hearing, and that Counsel for the Respondent conceded that the Respondent had not been in

any way misled by the "mis-description" in the original complaint, the amendment was allowed.

In making this decision, the Board stated, "It is apparent that in this case as in many others that the complainant has had difficulty establishing the correct identity of the entity against whom the complaint is raised. . . . it seems to me that I should give effect to the spirit and intent of the legislation which was designed to be remedial and grant the requested amendment."

Subsequent to the Board's report on these preliminary matters, a settlement agreement satisfactory to all parties was achieved. Since the Board of Inquiry had already been established to hear the case, the settlement agreement was submitted to the Board for ratification.

The ratified Memorandum of Agreement provided for:

- (1) an agreement by the Respondent that all applicants for heavy duty janitorial work will be evaluated on individual merit without reference to the applicant's sex;
- (2) an apology by the Respondent to the Complainant for any inconvenience or injury to self-respect;