

OCT. 1977

HUMAN RIGHTS BOARDS OF INQUIRY

The following has been abstracted from a decision filed under the Human Rights Code of British Columbia. Copies of decisions may be seen at the office of the Director of Human Rights which is located at 880 Douglas Street, or copies of decisions will be forwarded by mail upon written request.

Robert C. Heerspinck
Complainant

against

Insurance Corporation of British Columbia
Respondents

Board: Leon Getz

Date: March 16, 1977

A Human Rights Board of Inquiry was appointed in January 1977 to hear the complaint of Robert Heerspinck that the Insurance Corporation of British Columbia cancelled his home fire insurance policy because he had been charged with possession of, and trafficking in, marijuana. Mr. Heerspinck alleged that the cancellation of his insurance constituted a denial of a public service without reasonable cause contrary to Section 3 of the Human Rights Code.

At the hearing, ICBC raised a preliminary objection that the Board of Inquiry had no jurisdiction to hear the complaint because the Human Rights Code does not apply to matters of insurance. Leon Getz, sitting as the Board of Inquiry, agreed to hear submissions from the Human Rights Branch and ICBC on this point and rule on the question of jurisdiction before proceeding to the substance of the complaint.

ICBC argued before the Board that contracts of insurance are not a service customarily available to the public and that the language of Section 3 of the Code is meant to deal only with common carriers, innkeepers and the like.

ICBC argued further that all matters pertaining to contracts of insurance are dealt with by the Insurance Act and the specific right to cancel insurance is provided for in Section 5 of that Act. Where a specific and a general statute are in conflict, ICBC argued, as in this case, the provisions of the specific statute must be upheld and the broader and more general requirement found in the Code that there be no denial of a public service without reasonable cause does not apply.

The Board rejected these arguments and ruled that the Human Rights Code does apply to matters of insurance.

In making this decision, the Board referred to a 1974 amendment to Section 3 of the Code. Section 3(2)(b) now states that the sex of a person is not reasonable cause for denial or discrimination in a public service unless it relates to the maintenance of public decency or to the determination of premiums or benefits under contracts of insurance.

In its decision, the Board reasons that it is clear from the 1974 amendment that the legislature did turn its attention to the impact of the Code upon insurance and made specific exempting provisions for the one particular aspect of sex. The Board concludes, then, that on all other grounds but this one, matters of insurance are not exempt from the provisions of Section 3.

The Board also examined Section 5 of the Insurance Act which provides:

- "5. (1) This contract may be terminated -
 - (a) by the insurer giving to the insured fifteen days' notice of termination by registered mail, or five days' written notice of termination personally delivered;"

The Board's conclusion was that the Insurance Act is silent on the matter of the right to terminate insurance and deals only with the procedure for its exercise. Since the Insurance Act does not touch the right to terminate, the question of a specific and a general statute being in conflict does not arise.

In concluding that matters of insurance are within the jurisdiction of the Code, the Board found that ICBC's approach would narrow the scope of the Human Rights legislation in a way that was not intended and cannot be justified by the wording of the Code.

The Board's decision states:

"It must be borne in mind that the Human Rights Code is in some respects legislation of a rather special character...the Code introduced into the law of British Columbia a ...new and guiding principle of fundamental and far-reaching importance... It is concerned... with broad categories of behaviour, and requires an interpretative approach that

is consistent with its character. In my view it demands that 'fair, large and liberal construction and interpretation as best ensures the attainment of its objects'.

Supreme Court Appeal

ICBC appealed the Board of Inquiry ruling that the Human Rights Code does apply to matters of insurance to the B.C. Supreme Court and that appeal was heard on August 17, 1977 by Mr. Justice Meredith.

Mr. Justice Meredith upheld the Board of Inquiry ruling, stating in part:

"Certainly the Code, if applied to the insurance industry, does have the effect of altering the right of insurers. But it seems plain to me that the words contained in s.3(1) indicate an intention to do just that; to abrogate the right of merchants and professionals and others to withhold goods and services without cause. To hold that the Code does not apply to insurers would be to hold that it does not apply to all kinds of other businesses which may be the subject of special statutes. The Code would be emasculated.

.....I conclude that the appellant can only cancel the insurance policy owned by the respondent for reasonable cause and that this Board of Inquiry has jurisdiction to deal with the matter."

THE BOARDS OF INQUIRY

Mr. Justice Meredith said that he was fully satisfied that the Board of Inquiry was not biased and that it was not an arm of the government. He said that the Board of Inquiry was an independent body and that it was not subject to the control of the government.

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