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HUMAN RIGHTS BOARDS OF INQUIRY

The following awards were filed during September and December, 1975, under the Human Rights Code of British Columbia.

AGGRAVATED DAMAGES

A complaint by Ms. Jean Tharp against Lornex Mining Corporation Ltd.

These proceedings arise out of a complaint filed by Jean Tharp alleging that Lornex Mining Corporation Ltd. discriminated against her, contrary to Section 8 of the Human Rights Code of British Columbia. The alleged contravention relates to housing accommodation provided by Lornex to its employees at the site of its mining operations in the Highland Valley near Ashcroft, British Columbia.

Complainant and respondent were represented by counsel, and four witnesses gave evidence at the hearing. Ms. Tharp and Maurice Guilbault, a human rights officer, gave evidence on behalf of the complainant.

John Mahon, personnel superintendent for Lornex, and James Gravestock, who was labour relations superintendent at the time, gave evidence on behalf of the respondent.

Ms. Tharp was employed by Lornex as a laboratory technologist in January 1974. Her evidence is that she inquired into housing accommodation at that time. Lornex owned and operated bunkhouses at its campsite, but she was advised that these were available for men only

Ms. Tharp applied for camp accommodation on September 4th, 1974. She was one of five or six female employees who satisfied the company's eligibility requirements related to camp accommodation. Her application was accepted, and she moved in on September 17, 1974.

The company's policy until July 1974 was to not charge its office and technical employees for accommodation and meals at the campsite. This policy had been changed, apparently in response to the signing of a collective agreement between the company and the trade union representing the employees. Under the new policy, office and technical employees who lived at the campsite prior to July were not charged for room and board while they continued to reside there; but, if they applied for accommodation at the camp after that date, they were charged.

The bunkhouse contained 10 double rooms and common washing and toilet facilities that were shared by all the occupants. The nature of the facilities clearly suggests that they were designed for use by one sex only--male.

Ms. Tharp occupied one of the double rooms in Bunkhouse No. 2. She was the only female resident in the bunkhouse. She testified that she used the toilet facilities, but did not use the showers, because she was embarrassed at the prospect of a man being in the same room. She continued to reside at the camp, although she frequently went to Kamloops in order to bathe in privacy.

Shortly after moving into the camp, Ms. Tharp contacted the Director of the Human Rights Branch and expressed her dissatisfaction with the accommodation provided by Lornex. The branch's Maurice Guilbault visited the mine site on September 18, and inspected the facilities.

On October 14, 1974 Mr. Guilbault met Ms. Tharp in Kamloops, and she formally lodged a complaint alleging a contravention of the Code by Lornex.

On October 17, 1974 Mr. Guilbault met with the firm's Mr. G.R. Wyman, who indicated that the company, in response to an inspection by the Provincial Health Officers, had decided to erect, in the common facility area of the bunkhouse, a partition that would divide the bunkhouse into two parts. The only access between the two sides of the bunkhouse would be a door through the partition that could be locked and unlocked only from the side of the bunkhouse occupied by the complainant. The company had also decided to restrict occupation of the side occupied by the complainant to female employees.

Shortly afterward, the complainant advised Mr. Guilbault that some of the male occupants of the bunkhouse were continuing to enter through the entrance door on her side, apparently because this route shortened the distance between the male side and the central dining and recreation facilities at the camp. Because of this traffic, the complainant remained reluctant to use the shower. Her complaints led to a meeting between Mr. Guilbault and Mr. James Gravestock on November 1st. Mr. Gravestock agreed to attend to the problem.

The complainant continued to occupy her room in the bunkhouse until the end of February 1975. The camp was closed on March 19, 1975. The company's decision to close the camp and to replace the accomodation with apartment units at Logan Lake was made in 1973, and was not

connected with the complaints made against Lornex under the provincial human rights legislation.

The respondent questioned whether the alleged discrimination was in respect of a "condition of employment". Counsel for Lornex argued that, because the matter of campsite facilities was not included in the collective agreement between Lornex and the union representing its employees, and because Lornex was under no obligation whatsoever to provide campsite accommodation, the matter of room and board could not be a condition of employment, and that therefore the entire allegation was outside the ambit of Section 8.

The Board has concluded that even if the matter of room and board and rates for room and board may not be strictly a condition of employment, the alleged discriminatory conduct of Lornex is nevertheless within the ambit of Section 8. In the opinion of the Board, the language of Section 8 is not confined to the terms set forth in a contract of employment, but rather contemplates a much broader scope. The Board acknowledges that there was no obligation on the part of Lornex to provide accommodation for its employees, but that if accommodation were to be provided, it must be provided on a non-discriminatory basis.

The Board dealt with the complainant's claim that she was entitled to accommodation at the campsite, free of charge. Lornex took the position that there was no discrimination involved in charging Ms. Tharp for room and board, because, at the time she moved to the campsite, every new resident was required to pay. It is also clear, however, that had she been in the campsite prior to July 1974, she would have been among the employees who were not charged room and board.

The Board accepted the evidence of Ms. Tharp that she inquired about the availability of accommodation at the campsite when she began her employment with Lornex in January 1974, and that she would have moved to the campsite had that option been available to her. That option was not open to her, because Lornex had a policy of not offering campsite accommodation to female employees. In other words, the reason that the complainant was not a resident of the campsite early enough to be entitled to free room and board is that she was denied that accommodation on the basis of her sex. The Board therefore ordered Lornex to pay Jean Tharp the sum of $263.50, being the amount deducted from her pay cheques for room and board after October 10, 1974.

The Board was also of the opinion that, at least until the partition in the middle of the facilities in Bunkhouse No. 2 was completed, and residency in the complainant's side restricted to female employees, Lornex failed to offer to the complainant toilet and washroom facilities that could be used with the same degree of privacy provided male residents of the other bunkhouses.

The Board concluded that Ms. Tharp was discriminated against by virtue of the nature of the accommodation provided to her and that the basis for that discrimination was Ms. Tharp's sex. She had been placed in an exclusively male domain and had been denied the privacy extended by Lornex to most of the male residents at the campsite. Ms. Tharp had therefore been discriminated against on the basis of her sex.

The Board concluded that Lornex had proceeded with at least a wanton disregard of the provisions of the Code. It was also of the opinion that the complainant had suffered aggravated damages in respect of her feelings or self-respect. It accepted Ms. Tharp's evidence that she was embarrassed and intimidated, and that circumstances forced her to go to Kamloops, rather than use the shower in Bunkhouse No. 2. Because her feelings were severely affected by the circumstances of the accommodation she obtained at the campsite, the Board ruled that Ms. Tharp was entitled to an award under Section 17(2)(c).

The complainant, the Board said, was entitled to insist upon fair treatment from Lornex in relation to her accommodation at the campsite. There were, however, factors that limited the amount of the award. The Board concluded that it should not consider the events subsequent to the end of October 1974, as the company had taken steps to rectify the problem. Consequently, Ms. Tharp was awarded damages in the amount of $250.00

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DISCRIMINATION WITHOUT REASONABLE CAUSE

A complaint by Douglas Oram and Marion McLaren against Frank Pho

A Board of Inquiry, convened in Nelson by the British Columbia Human Rights Code on August 8th, 1975, has brought down a decision under a Section of the Human Rights Code dealing with discrimination without reasonable cause. The case involved two individuals, Douglas Oram and Marion McLaren, who were refused service in a government-licensed beer parlour in New Denver.

The inquiry exposed the reason for refusal of service as "...long hair uncombed, and we don't know how many more of your kind you might have outside." The complainants, however, were clean and neat, and had that fact documented.

An officer of the Human Rights Branch of the B.C. Government, who was in attendance at the time of the alleged contravention, confirmed the denial of service by the waitress involved.

The Board of Inquiry commented on the owner of the pub with the statement: "Not only, therefore, did Mr. Pho specifically authorize the violation of Section 3 of the Code by his servant, Wanda Carlson, but also condoned that violation and took no steps to effect any remedial action once it was drawn to his attention."

In the judgment, the Board assessed the Section of the Code that deals with discrimination without reasonable cause by saying, "The examples given in Subsection 2 (of the B.C. Human Rights Code) of race, religion, color, ancestry and place of origin were clearly not intended by the Legislature of this Province to have been an exhaustive list of the types of minorities to be protected. One must accept the legislation and the intent of the Legislature as protecting all minorities from disfavourable conduct, for discrimination or denial is based upon personal taste or bias unfavourable to the specific minority in question."

Other aspects of the case involved issues such as an employer's responsibilities in knowing which of his employees was responsible for a contravention of the Human Rights Code. Continued the Board: "A rational and common sense approach to complaints of this nature leads one inevitably to the conclusion that there would be few occasions indeed when the identity of an employee would not be known or could not be easily determined by the employer. Had it become apparent at any point in the proceedings that the respondent was, in any way, frustrated or impeded in his response to the complaint by a lack of understanding or uncertainty as to which of his employees was directly responsible for the conduct complained of, the Board would have had no hesitation whatsoever in immediately granting him an adjournment in order that further and better particulars could have been supplied."

The Board also judged that "...the intent of Section 3(1) of the Code is adequately conveyed by the words 'no just cause'. The respondent had complained that the wording of the complaint had not used the exact wording of the Human Rights Code in its text."

As a defence for his actions, the respondent also raised the issue covered in Section 7 of the Innkeepers' Act which states: "Any innkeeper or his representative may require any person, not registered as a guest, boarder or lodger, whom he deems undesirable, to leave the inn, and in the event of such person failing to leave, may eject him from the inn premises."

The counsel for the complainant, however, had the opinion that "In deeming a person 'undesirable', an innkeeper must do so on the evidence and according to principles of reason and justice." The counsel for the complainant supported his case by citing the precedent of Hunt vs. College of Physicians and Surgeons of the Province of Saskatchewan, among others.

The Board subsequently deliberated, and arrived at the decision that "...The indirect tyranny of a society composed of individuals who all think, look, dress and behave in precisely the same manner would be no less a horror than a society which did not permit persons with different tastes to exercise those differences within proper limits of public order and decency.

"Along with the changes in style of dress and fashions of personal appearance referred to above, there has developed an increasing tendency on the part of those who disfavour such changes to exercise various forms of discrimination and oppressive conduct against those who favour them. The passage of the Human Rights Code by the Legislature of this Province in 1973 resulted in a declaration that such discriminatory and oppressive practices be removed from those spheres of commercial activity described therein.

"...It is clear that the law does not now entitle an individual to deem a person undesirable simply because that person's hair length and style does not conform to his own personal taste. Section 3 of the Human Rights Code requires a reasonable cause to exist before there can be a denial of service. Section 7 of the Innkeepers' Act requires an innkeeper to act reasonably in determining whether or not any particular individual is undesirable. Common sense compels one to the conclusion that the powers found in these two sections of these different statutes are not in conflict but, in fact, complement one another. Insofar as an innkeeper may have had a wider discretion under Section 7 of the Act prior to the passing of the Human Rights Code in British Columbia, Section 3 of the Code has now provided the innkeeper with valuable assistance

in determining in a given situation what may or may not be reasonable cause."

The Board therefore ordered Mr. Pho to cease contravening Section 3(1) and compensate Doug Oram and Marion McLaren by a payment of $375.00.