Court Cases-
Human Rights Commission vs. John V. Peter Young June 1977 Use Accomodation

FOLDER NO. 2-46

V. S. W

IN THE MATTER OF THE HUMAN RIGHTS CODE
OF BRITISH COLUMBIA

- and -

IN THE MATTER OF A COMPLAINT BY YVONNE
BILL AGAINST JOHN YOUNG AND RITA YOUNG
AND J. & R. TRAILER SALES & SERVICE LTD.
AND PLOYART'S TRAILER COURT

Place of Hearing	Lillooet, B.C.
Date of Hearing	March 21st & 22nd, 1977
Board of Inquiry	H. A. Hope
Counsel for the Complainant and the Director, Human Rights Code	S. F. D. Kelleher
Counsel for the Respondents	Daphne M. Smith and R. L. M. Blair

D E C I S I O N

This Board of Inquiry was appointed pursuant to the Human Rights Code of British Columbia to consider a complaint made in writing by Yvonne Bill on February 19th, 1976.

The essence of the complaint is that Mrs. Bill was denied the right to rent space in a trailer park called Ployart's Trailer Park, owned by J. & R. Trailer Sales and Service Ltd. and operated by John and Rita Young.

Mr. and Mrs. Young are the principal shareholders of J. & R. Trailer Sales and Service Ltd. and they operate the trailer park for that company in Lillooet, B.C.

Lillooet is a small and somewhat remote ranching and logging community located in the Fraser Valley. A large percentage of its population is native Indian. Because of its size, location and structure as to racial origin, discrimination is a more profound potential than in larger communities where the racial boundaries are less sharply defined.

It is apparent that racial discrimination in Lillooet has social implications that spread far beyond the individuals involved in any specific incident and infect the relations between the two predominant races.

One cannot speak of varying standards of exactitude in the administration of the Code, but the complaint in question must be viewed in the context of the community in which it arose as an added dimension of the circumstances.

The onus is on the Complainant to establish on a balance of probabilities that the Code has been breached. But the balance of probabilities is not a single objective standard in our law. Probability is measured with a subjective view to the implications of a particular finding. Smith v. Smith and Smedmen (1952) 2 S.C.R. 312, per Cartwright J. at 331:

> "It is usual to say that civil cases may be proved by a preponderance of evidence or that a finding in such cases may be made upon the basis of a preponderance of probability and I do not propose to attempt a more precise statement of the rule. I wish, however, to emphasize that in every civil action before the tribunal can safely find the affirmative of an issue of fact required to be proved it must be reasonably satisfied, and that whether or not it will be so satisfied must depend upon the totality of the circumstances on which its judgment is formed including the gravity of the consequences of the finding."

In my view the legislative intent of the Code and its social purpose are proper considerations in the subjective application of the probabilities test. The intent and purpose of the Code is to eradicate certain discriminatory practices from our Society.

Obviously discrimination as an attitude of mind cannot be prohibited by legislation but acts done that are motivated by discrimination can be and are prohibited.

The task of a Board of Inquiry is to determine as an issue of fact, whether a person has committed any of the prohibited acts and to further determine as an issue of fact, whether the prohibited act was motivated by discrimination.

That task requires a finding as to a state of mind, but the task of determining a quality or state of mind is not unique. It is a routine function of Courts administering the criminal law and is a function of the administration of civil law.

Broadly speaking, intent can be inferred from the acts alleged and the surrounding circumstances. In criminal law that inference must be drawn beyond a reasonable doubt. In civil law the inference is to be drawn on a balance of probabilities but on a scale that varies according to the gravity of the finding.

In my view, the inference of discrimination is to be found on the lower scale of probability. The legislative intent of the Code does not contemplate punishment of offenders as a principal aim. Its aim is to educate the public with respect to the need for tolerance as an essential weave in our social fabric.

That aim emerges from a consideration of Section 11 of the Code as follows:

> "11.(1) There is hereby established a commission to be known as the British Columbia Human Rights Commission, consisting of such members as the Lieutenant-Governor in Council may from time to time appoint to hold office during pleasure.

(4) It is the function of the commission

(a) to promote the principles of this Act;
(b) to promote an understanding of and compliance with this Act;
(c) to develop and conduct educational programmes designed to eliminate discriminatory practices; and
(d) to encourage and co-ordinate programmes and activities promoting human rights and fundamental freedoms."

Section 12 of the Act provides for the appointment of a Director of the Commission and Section 15 requires that the Director attempt to resolve all complaints amicably between the parties.

The insertion of a mandatory attempt to settle a dispute is an unusual statutory device that is inconsistent with a view of the Code as penal legislation.

It is true that Section 24 of the Code permits the laying of a charge under the Summary Convictions Act for breaches of the Code, but that is collateral to the issue before this Inquiry. Any such charge would be measured as to onus of proof on its footing as legislation providing for penal consequences.

The Inquiry procedure is of a civil nature and the mandatory requirement that the Director seek a settlement of the issue reinforces my view that the primary goal of the legislation is to educate rather than punish.

It is only upon the failure of the Director to settle the complaint that resort is had to a Board of Inquiry.

Even in those circumstances, the jurisdiction of the Board of Inquiry is of a nature similar to the jurisdiction vested in civil courts.

Section 17(2)(a) permits the Board of Inquiry to issue the equivalent of a mandatory injunction compelling the

granting to persons discriminated against the rights withheld as a result of discrimination.

Section 17(2)(b) permits the Board of Inquiry to order an amount of damages by way of compensation for any acts of discrimination. Section 17(2)(c) permits the Board of Inquiry to impose punitive damages in appropriate cases to be paid to persons who have been the subject of acts of discrimination.

In my view the affront to human dignity implicit in acts of discrimination falling within the categories prohibited by the Code constitutes only one aspect of the wrong the Legislature sought to redress. That wrong is limited in its aspects to relations between the individuals directly involved.

The broader statutory intent is to limit or erase discrimination as an influence in our society. However idealistic that goal may be it is a goal that emerges from a reading of the Code. In my view no greater disservice could be done to the achievement of that goal than to indulge a litigious and adversary approach to the administration of the legislation. To implant in the minds of onlookers the conclusion that discrimination exists only as a matter of strict proof would be to reduce the legislation to a mere expression of good intentions.

My interpretation of the legislation is that a complainant has discharged the onus of proof by adducing evidence of circumstances from which discrimination arises as a reasonable inference. It is not necessary to negative other reasonable inferences nor is it necessary to prove assertively an act of discrimination.

In my view the Complainant in this case discharged the onus upon her when she established that she is a native Indian, that she applied for public accomodation that was advertised for rent and that she was refused the accomodation for no good and apparent reason. The onus then shifted to the Respondents to establish that the refusal was not based on any category of discrimination prohibited by the Code.

The Complainant testified that she responded to an advertisement in a local newspaper which advertised a trailer for rent. She responded to that advertisement by contacting Gerrard Goeujon, a lawyer practicing in Lillooet, who expressed his authorization to rent the trailer.

Mrs. Bill viewed the trailer with Mr. Goeujon on September 19th, 1975. She found the trailer acceptable and entered into a rental agreement in writing with Mr. Goeujon and paid to him the sum of $210.00, being rental for one month to commence on the following day, September 20th, 1975.

Her right under the agreement was to take occupancy immediately. To that end she returned to the trailer on the afternoon of September 19th, 1975, accompanied by her common-law husband and a male friend. The two men are native Indians.

She stated that an unidentified man interrupted her inspection and told her and her two companions that they should not move into the trailer until they received the permission of the Respondents, Mr. and Mrs. Young. She was told that Mr. and Mrs. Young were away from the trailer court and would return the following Monday, being September 22nd, 1975.

On the morning of September 22nd, 1975 Mrs. Bill had an interview with Mrs. Young. That interview took place at the trailer court in the office trailer. Mrs. Bill formed the

impression during the interview that Mrs. Young was seeking any pretext to refuse her admission to the trailer park. She stated that she left the interview with the firm conclusion that Mrs. Young would not permit her to occupy the trailer. I think the conclusion reached by Mrs. Bill was a fair one under the circumstances, even though there was no express refusal on the part of Mrs. Young. That meeting ended with no express decision on the part of Mrs. Young as to whether she would approve the Complainant as a tenant of the park.

It would be speculation to consider what might have happened if Mrs. Bill had returned to the trailer park to renew her efforts to gain acceptance to it.

She never did return because of an intervening event. On the evening of September 22nd, 1975 Mr. and Mrs. Young met with Mr. Goeujon and a local businessman by the name of Donald Shaw. That meeting resulted from an earlier discussion between Mr. Young and Mr. Goeujon in a telephone conversation the previous day. That conversation will be discussed later.

In the meeting on the evening of September 22nd, 1975 it became apparent that a misunderstanding had occurred with respect to the trailer that was rented to Mrs. Bill.

That trailer was owned by one Donald Anderson and was occupying a space in the Floyart's Trailer Court. The trailer had been in the trailer court for quite some time. It had been occupied by Mr. Anderson and his family but was vacated by them for reasons that have no relevance to the Inquiry. At the material time Mr. Anderson was residing in Hinton, Alberta and the trailer was vacant. During the meeting it was revealed that Mr. Anderson had approached Mr. and Mrs. Young, Mr. Goeujon and Mr. Shaw and authorized them, independent of one another, to try to sell his trailer or rent

it in the event no sale was forthcoming.

His authority to Mr. and Mrs. Young was in the form of a letter and during the meeting they learned for the first time that a similar letter had been given to both Mr. Goeujon and Mr. Shaw.

Mr. and Mrs. Young were aware that Mr. Goeujon had been retained by Mr. Anderson to document the sale of the trailer if a sale were forthcoming but were unaware of any instructions in him to arrange for its rental. They were unaware of any role on the part of Mr. Shaw.

During the meeting, Mr. and Mrs. Young expressed strong disapproval of Mr. Goeujon for his actions in renting the trailer and trailer space without their knowledge or consent.

For his part, Mr. Goeujon insisted that he had no knowledge of any limitation on his right to rent the trailer space or any requirement that he have the consent of Mr. and Mrs. Young before he concluded a rental.

Mr. and Mrs. Young gave evidence to the effect that they had spent many years of hard work and careful management to develop the trailer park and that they were gravely offended by the apparent high-handedness of Mr. Goeujon in renting the space in their trailer park without consulting them. I accept that evidence. I found them to be honest and straightforward people. That is,not to say I find them free of prejudice and I will comment on that later to the extent that I feel it necessary in the exercise of my jurisdiction.

In particular, I accept the evidence of the Youngs that management practices at the trailer park were rigid and that admission to the park was selective. The criteria for

admission to the park was to establish to the satisfaction of the Youngs that the applicant would be a "good tenant". The Youngs described a "good tenant" as a person who could be expected to honour the discipline of the park. The park was described by numerous witnesses as being quiet, well run and pleasant. Rowdyness and disruptive drinking were discouraged.

Mrs. Young had the primary responsibility for that aspect of the management of the park and I found her to be a forceful and strong-minded person. It was apparent that she would be most unsympathetic to any disruption in the serenity of the park.

In particular she stated that she had evolved a set of rules over her many years of operation of the park that had been reduced to writing. A copy of those rules were filed as an Exhibit. There are twenty-two rules, a large number of which are directed towards maintaining order in the park.

One of the rules reads as follows: "Trailer occupant cannot be changed without the consent of management".

Mrs. Young testified that all tenants received a copy of the rules and were required to acknowledge their understanding and acceptance of them. In particular, she testified that Mr. Anderson, the owner of the trailer that was rented to the Complainant, had received a copy of the rules and was aware of them.

She further testified that all prospective tenants were required to provide references unless they were otherwise known to her. She produced records which supported that policy and practice.

I am satisfied on the evidence that the general

practice of Mrs. Young was to deny accomodation in the trailer park to any prospective tenant who failed to satisfy her that he would meet her criteria of a "good tenant".

Counsel for the Complainant and the Director submitted on the evidence that some prospective tenants were more equal than others in the eyes of Mrs. Young. I agree with him.

My estimate of Mrs. Young is that a person of the white race who was married and was employed in a responsible position would enjoy an initial advantage in an evaluation by Mrs. Young.

Equally I am of the view that a native Indian would face immediate resistance in persuading Mrs. Young that he was a desirable tenant. I believe that Mrs. Young is prejudiced in the sense that many well-intentioned and socially responsible people are prejudiced. It is prejudice in the true sense that it operates as a pre-judgment of people based upon race, employment, education, language, manner of dress and social standing.

In my assessment of Mrs. Young, I am confident that a white doctor would enjoy a far better initial response from Mrs. Young than a native Indian truck driver. At the same time I am bound to say in my view of Mrs. Young that a native Indian doctor would enjoy a greater initial advantage than a white truck driver.

In short, Mrs. Young discloses no immunity to the status concepts that infect our society. I do not hold out any jurisdiction to judge her in that regard.

It is repeated that the Code does not prohibit prejudice or discrimination as an attitude of mind. It prohibits certain acts that are motivated by discrimination. In this particular case, it prohibits the refusal of accomodation on

the grounds of racial discrimination. I am not satisfied that the denial of accomodation in this instance was based upon any of the categories of discrimination prohibited in the Code. I believe the accomodation was refused by Mrs. Young, to the extent that it was refused, because of the unfortunate intervention of Mr. Goeujon and the misunderstanding that arose as a result. Those difficulties relate back to the owner of the trailer, Mr. Anderson, and his failure to keep people fully informed with respect to his actions and his intentions.

In particular he should have told Mr. and Mrs. Young of the instructions he had given to Mr. Goeujon and Mr. Shaw. In addition, he should have told Mr. Goeujon of the necessity of obtaining the consent of Mr. and Mrs. Young for the rental of the trailer space. I can readily appreciate the hostility and resentment of the Youngs at what they considered to be a high-handed intrusion into the management of their private business affairs.

The Youngs first learned of that intrusion upon their return to the trailer park in the early morning hours on Sunday, September 21st, 1975.

They were awakened after a few hours of sleep by Sinclair Langley, the tenant that had been left in charge of the park in their absence. Mr. and Mrs. Young said that Mr. Langley told them that Mr. Goeujon had rented the Anderson trailer to "a bunch of drunken Goddamned Indians," or words to that effect. Mr. Langley gave evidence and stated that he did not recall incorporating any racial slur in his report to Mr. and Mrs. Young, but I am satisfied on hearing his evidence that his sensitivity as to what would constitute a racial slur was somewhat less developed than one would desire.

In any event, Mr. Young phoned Mr. Goeujon for the purpose of enquiring into his actions. Mr. Young was angry and alienated in his approach to the telephone call and admits he may have repeated to Mr. Goeujon the comment about "drunken Goddamned Indians" that was made to him by Mr. Langley. He denied any concern with the fact that the trailer had been rented to native Indians, but said his concern was that the trailer space had been rented in his park without his knowledge and that he was angered by that intrusion into his private business affairs.

Mr. Goeujon gave evidence that indicated that Mr. Young was more extravagent of his criticism of a rental to native Indians than Mr. Young admitted. However, Mr. Goeujon readily conceded that the major concern of Mr. Young was the intrusion into his business.

Whatever may be the precise context of that conversation, I am satisfied on the evidence that the major concern of Mr. and Mrs. Young was the intrusion into their business affairs. I am also satisfied that Mrs. Young approached her interview with the Complainant the following morning with a closed mind and with a negative response to the entire transaction. It was in that frame of mind that she had her discussion with the Complainant and it was that antipathy that was recognized and measured by the Complainant Mrs. Bill, leading to her conclusion that she would not be permitted to rent the trailer space.

In the confrontation between Mr. and Mrs. Young and Mr. Goeujon and Mr. Shaw that evening, Mrs. Young took the position that it was for her to determine who would rent the trailer and that she had that authority from Mr. Anderson. That position was disputed by Mr. Goeujon and Mr. Shaw with

the result that a telephone call was placed to Mr. Anderson in Hinton, Alberta. That telephone call further alienated Mrs. Young in that Mr. Anderson failed to support her position that she had sole authority to conclude the rental of the trailer. In the result, Mr. and Mrs. Young ordered Mr. Gocujon and Mr. Shaw to have the trailer removed from the trailer park forthwith.

That instruction was obeyed by Mr. Gocujon and Mr. Shaw the following day and the trailer was removed to another trailer facility where it was occupied approximately one month later by the Complainant, Mrs. Bill.

Mrs. Bill continued to occupy the trailer at the time of this Inquiry and is in the process of purchasing it from Mr. Anderson. On those facts, and in the application of the burden of proof as I have described it, I find that Mr. and Mrs. Young refused to permit the Complainant to occupy the trailer space in the sense that they ordered the trailer removed from the park, frustrating any possibility of Mrs. Bill occupying the space. But I cannot say that the refusal was based upon discrimination on the basis of race or any other category of prohibited discrimination. In fact, in my view, Mrs. Bill was an innocent victim of circumstance and the refusal to rent the space to her was only collateral to the dispute between the Youngs and the owner of the trailer.

Mrs. Bill is employed in a responsible position with the Band Council in Lillooet. On all of the evidence and on her demeanor, she would have met the criteria of Mrs. Young as a "good tenant". Her response to the hostility she detected in Mrs. Young was to assign it to the fact that she was a native Indian. That is to be understood. Mrs. Young admits that she was upset at the time of the interview. She

did not discuss frankly with Mrs. Bill the reason for her upset. Instead, she gave Mrs. Bill a copy of the regulations for the trailer park and went over them with her one by one. In addition, she insisted that Mrs. Bill obtain references as a condition of entering the park.

Mrs. Bill admitted in her evidence that she did not have references and that she was asked to provide them. She stated that in her view the request for references was a pretext and that Mrs. Young had no intentions of permitting her to occupy the trailer space.

The precise context of the conversation was not repeated, but I surmise that Mrs. Young reflected in the conversation, in addition to her anger at the situation, an attitude that emerged during the course of her evidence. That attitude can best be described as one of patronage. Mrs. Young denied vehemently that she was prejudiced against native Indians or any other race. I accept her earnestness and good faith in expressing that attitude. But in her evidence she made comments to the effect that she treated Indians like whites, that she gave her used but serviceable clothing to native Indian women in her employ, that she obtained used clothing for residents of the reserve in Lillooet, and that she took pains to try and create employment for needy native Indian women.

It was clear from her evidence and demeanor that she did not consider native Indians her equals. Mrs. Young appeared to me to be a good person as that term is used in the vernacular. She is a woman of charitable impulse who decries racial discrimination.

But her apparent definition of racial discrimination includes only the bigotry and blind hatred that is associated with the higher profile of prejudice. She does not recognize

her attitude of patronage and condescension as but further manifestations of discrimination. I deal with that aspect of her evidence and demeanor only to answer the submission by Counsel for the Complainant, mentioned previously, that any limitation imposed on the Complainant as a result of her being a native Indian could constitute discrimination under the Code.

If I were satisfied on the evidence that Mrs. Young denied accomodation in the park to the Complainant on the grounds that she was a native Indian, I would have no hesitation in finding the complaint proven.

I have already indicated that I believe Mrs. Young is capable of viewing a potential tenant with askance simply because they are native Indian.

I am reinforced in that view by evidence led by the Complainant with respect to overtures made after this incident for accomodation in the trailer park. Those overtures were made by way of investigation on the initiative of the Director. The investigation took place on May 27th, 1976 at the trailer court.

Two native Indian women, Lilly Samson and Terry Jules, approached Mrs. Young and inquired about rentals in the park. Later that day a white couple, Hugh Miller and Ingrid Pipke, made a similar approach to Mrs. Young.

None of the four people were trained investigators and the evidence was deficient as to particularity. In addition, there was some conflict as to what occurred.

Nevertheless, I am satisfied that Mrs. Young viewed the prospect of Ingrid Pipke as a tenant with somewhat greater

enthusiasm than she viewed the prospect of Lilly Samson as a tenant. In both cases, Mrs. Young indicated there was no immediate availability.

But I am not here to monitor the private thoughts of Mrs. Young except to the extent that they give rise to inferences of discrimination of a nature proscribed by the Code.

Ample evidence was led by Mrs. Young to prove that she accepts persons of varying racial backgrounds as tenants in the park. That evidence was extensive and persuasive. It disclosed the presence of tenants or former tenants of Negro, East Indian and native Indian origin. That evidence disposes of any suggestion that a color bar exists as part of the policy of the trailer park.

I have no doubt that a native Indian seeking admission to the trailer park faces an initial hurdle because of race. But it is clearly a hurdle that can be overcome.

The Code, it must be remembered, does not prohibit discrimination. It prohibits certain acts that are motivated by discrimination.

In this case the prohibited act asserted is a refusal of accomodation based on racial discrimination.

Mrs. Young did not refuse accomodation to Mrs. Bill on any ground, in the sense that there was no direct refusal. Mrs. Young asked Mrs. Bill to obtain references and return.

To find a refusal it is necessary for me to treat the direction by Mrs. Young that the trailer be removed from the park as a refusal of accomodation to Mrs. Bill. Whatever standard of proof is applied, it would be necessary for me

to find as a fact that Mrs. Young ordered the trailer removed because she did not want Mrs. Bill as a tenant.

That finding is against the evidence of Mr. and Mrs. Young and is inconsistent with the evidence of Mr. Goeujon.

I can appreciate readily the outrage of Mrs. Bill. She rented the trailer and paid her money. She had every right to presume the matter was closed after her discussions with Mr. Goeujon.

The intervention of Mrs. Young was never explained to her. In addition, I infer that the condescending and patronizing attitude of Mrs. Young that was apparent in her demeanor as a witness was present during her interview with Mrs. Bill. In those circumstances it would be difficult to anticipate any reaction in the Complainant other than the one she expressed in evidence. She was satisfied that she was being denied admission to the park by Mrs. Young because of her race.

I am satisfied that Mrs. Young ordered the trailer out of her park because she was offended by the actions of Mr. Goeujon and Mr. Anderson.

In making that finding, I repeat my view of Mrs. Young that she would be less receptive to a native Indian than to a white person. But I am completely unable to say that I am satisfied she would have denied accomodation to Mrs. Bill in an ordinary application simply because she was native Indian. Mrs. Young scrutinized all prospective tenants rigorously. I think in the exercise of that scrutiny she is as much motivated by prejudice as anyone in the sense that she prejudges tenants on the basis of race, occupation, marital

status, speech and the myriad other factors that confer or deny status in our society.

It is to her credit that she demonstrates a desire for fairness and an ability to balance her prejudice in the light of facts.

I can anticipate that native Indians may find attitudes of condescension and patronage more demeaning and infuriating than overt bigotry. The bigot can be identified and despised for his quality of prejudice. The prejudice of patronage is more subtle and more difficult to flush from its camouflage of complacency and self-righteousness.

It is to be hoped from this Hearing that Mrs. Young has developed some sensitivity to the desire of native Indians to be treated as equals rather than objects of sympathy and charity. It is a question of recognizing dignity.

In summary, the allegation of discrimination is dismissed. I note in passing that these Reasons contain elements of social evaluation. Those elements do not arise out of accident or oversight.

In my interpretation of the Code, it is a function of a board of inquiry to integrate social comment into its evaluation of the complaint in the exercise of its jurisdiction under the Code and in the advancement of the social purpose contemplated in the Code.

There remains to be determined a preliminary objection raised by Counsel for the Respondents. That objection relates to the manner in which the complaint was made and my appointment as a Board of Inquiry to hear the complaint.

Section 15 of the Code contemplates that a complaint

can be made to the Director with respect to allegations of discrimination contrary to the Code. No procedure is set forth in the Code for the making of the complaint.

Section 11(7) of the Code provides as follows:

> "The Lieutenant-Governor in Council may, by Order, make regulations adding to or extending the functions of the commission and respecting any matter necessary or advisable to carry out effectively the intent and purpose of this Act."

Section 16(6) of the Code provides as follows:

> "The Lieutenant-Governor in Council may, by Order, establish rules governing the procedure of a board of inquiry."

By Order-in-Council 593, dated February 14th, 1975, the Lieutenant-Governor in Council passed certain Regulations. The Regulations do not disclose whether they were passed pursuant to Section 11(7) or Section 16(6). Section 16(6) speaks of "rules governing the procedure of a board of inquiry", while Section 11(7) speaks of "regulations".

The Order-In-Council 593 is headed "Regulation," and paragraph 1 reads as follows:

> "These regulations may be cited as the Human Rights Code Board of Inquiry Regulations."

I am not certain whether Order-In-Council 593 constitutes rules cast under Section 16(6), but described as regulations, or whether it constitutes regulations passed under Section 11(7).

Whatever may be the specific statutory authority for the passage of Order-In-Council 593, it would appear that the regulations contained in it are within statutory powers of the Lieutenant-Governor In Council.

Section 3 of the Regulations provides that complaints under the Code shall be in writing on a form

provided in the Regulations.

This complaint was initiated by a complaint made in writing by Mrs. Bill in the appropriate form. That complaint is dated February 19th, 1976 and makes reference to an incident that occurred on September 22nd, 1975. Section 23(1) requires that all allegations of complaint under the Code must be made within six months of the date of the incident giving rise to the complaint. The complaint of Mrs. Bill dated February 19th, 1976 complies with that requirement.

The form provided in the Regulations is a form printed on both sides of a single sheet of paper requiring that the complainant fill in certain blanks. The reverse page of the form sets forth the several aspects of discrimination recited in the various sections of the Code. Beside each category of discrimination is a box and in the complaint of February 19th, 1975, the boxes next to race and color have been checked. The balance of the reverse page of the form provides space for what is characterized as "details" and on the complaint in question, the entire page for details was filled in. It is common ground that an additional page was required to complete the details in the original complaint.

Section 16(1) of the Code requires the Minister of Labour for British Columbia as persona designata to receive a report from the Director of all complaints that cannot be resolved.

The Minister of Labour is then vested with a discretion to appoint a Board of Inquiry of one or more members and to fix a place and date for the hearing of the allegation of complaint. No procedure is set forth in the Code with respect to the implementation of Section 16. Section 4 of the Regulations provides that where the Minister exercises

his discretion to refer an allegation to a board of inquiry, the Director shall give at least fifteen days' notice of the date, place and time of the hearing, together with a copy of the report of the Director to the Minister and provides further that notice shall be directed to the members of the board of inquiry, the complainant and the respondent.

It is common ground that my appointment pursuant to Section 16(1)(a) was made by the Minister on January 19th, 1977 by letter received by me on January 24th, 1977, and that attached to the appointment was an incomplete copy of the complaint of February 19th, 1976. The complaint was incomplete in the sense that the additional page of details was not included.

It is also common ground that on February 7th, 1977 I received a copy of a notice of hearing from the Director that complied in all respects with the provisions of paragraph 4 of the Regulations. It is conceded by Counsel for the Respondents that the Respondents received a copy of the same notice of hearing.

That notice of hearing incorporated a further complaint in the prescribed form dated October 18th, 1976 and signed by Yvonne Bill. On the reverse side of the form where the categories of discrimination are set forth, the boxes beside the categories of race and marital status have been marked. The detail portion of the form contains an abbreviated summary of the details that appeared in the first complaint, but adding the allegation that the discrimination arose on the additional ground of marital status.

In the Hearing it became clear that the additional ground of discrimination was added on the initiative of the Director and on the anticipation that the Complainant had been

denied accomodation in the trailer park because she was living in a commonlaw relationship with a man who was not her lawful husband.

That anticipation never became a serious issue in the case, but it is necessary for me to deal with the objection to jurisdiction.

Counsel for the Respondents takes the view that the second complaint alleging discrimination as a result of marital status is in effect a new and separate allegation of discrimination and is barred by the operation of Section 23 of the Code.

He takes the further position that my appointment by the Minister appending only a portion of the original complaint is invalid. His extension of that position is that in the event my appointment is valid with respect to the first complaint, even though I did not receive a copy of that complaint in its entirety, then it is invalid with respect to the second complaint, of which I received no copy from the Minister.

Counsel for the Director takes the view that there is only one complaint and that the addition of the second complaint form merely particularized the nature of the act of discrimination that was alleged in the original complaint.

He points out that Section 16 of the Code does not impose any procedure on the Minister of Labour as to the manner in which an allegation will be referred to a board of inquiry or any procedure for the appointment of a board. The Regulations do not deal specifically with that aspect of an inquiry.

My appointment by letter adequately identified the Complainant and the Respondents. It appends the written

complaint of Mrs. Bill signed by her on the first page, but omits a partial page of detail. The portion of the complaint forwarded to me adequately particularizes the Complainant, the Respondents, and the date and general nature of the alleged infraction.

In addition the second paragraph of the complaint contains the following words:

> "I have requested the Director of the Human Rights Branch of this Ministry to assist you in the provision of all necessary material and in the establishment of a date and place for the hearing."

Subsequent to my appointment I received the notice of hearing, incorporating the full text of the original complaint and the second complaint.

I am satisfied that I was properly appointed under Section 16 of the Code to hear the original complaint.

The second aspect of the question relating to my jurisdiction to hear the second complaint must be resolved on the dispute as to whether it constitutes a fresh complaint or simply a particularization of the original complaint.

The original complaint alleges a breach of Section 5 of the Code. The particulars of the allegation make it clear that the specific complaint involves an alleged breach of Section 5(1)(a). That Section provides as follows:

> "5.(1)(a) No person shall deny to any person or class of persons the right to occupy as a tenant any space that is advertised or otherwise in any way represented as being available for occupancy by a tenant...
> because of the race, sex, marital status, religion, color, ancestry, or place of origin of that person or class of persons, or of any other person or class of persons."

It can be seen from a reading of that Section that the act prohibited is the denial of the right to occupy space

as a tenant for one or the other of the reasons set forth.

I shall consider the matter as if it were a criminal charge laid under the provisions of the Summary Convictions Act pursuant to Section 24(1) of the Code. On that analogy, I would not think it sufficient to lay an information that simply alleged a denial of a right to occupy space as a tenant without reference to one or more of the categories set forth in Section 5. I say that because it would be lawful for a person to deny the right to occupy space as a tenant for reasons other than those contemplated in Section 5. But I am further of the view that the reason assigned to the denial is a particular of the offence and therefore capable of amendment.

I say that because it appears to me that Section 5 creates the offence of denying a tenancy on discriminatory grounds and that the categories of discrimination represent different ways in which the offence can be committed.

The relationship between an offence and varying mannersin which it can be committed are subject to analysis by decision of the Supreme Court of British Columbia in Regina vs West and White Mortgage Corp. Ltd. (1976) 26 CCC 2nd, 551. Applying the law as it is enunciated in that case, it seems clear that the specific reason for the discrimination and denial of tenancy is a particular and capable of amendment.

Counsel for the Complainant sought such an amendment in the complaint before me and to the extent that the analogy to criminal proceedings has application, I grant the amendment.

In my view, however, the strictness of criminal proceedings should not be imposed upon inquiries conducted

under Section 17 of the Code. That Section contemplates a process that is civil in nature and in remedy. In addition, the board of inquiry is empowered under Section 10(5) of the Code to ignore the rules of evidence as imposed in a court of law. In my view the concept of strictness of pleadings as applied in the criminal law is unsuited to the process contemplated in Section 16 and 17 of the Code. That process is civil in nature and contemplates social objectives the achievement of which requires a latitude in due process.

On my reading of the Code and my understanding of its social purpose, I think the balance between the right of the complainant to exist free of discrimination and the right of a respondent to a fair hearing is achieved when a respondent is given reasonable notice of the circumstances surrounding the allegation against him and a full opportunity to defend himself against the allegation.

In my view reasonable notice consists of sufficient information to permit a respondent to identify the incident or transaction giving rise to the allegation. Paragraph 7 of the Regulations gives a board of inquiry a jurisdiction to require any party to furnish the board with additional information. I interpret that Regulation as vesting in the board of inquiry the right to compel delivery of particulars where it is deemed necessary in the interests of a fair hearing.

It must be remembered that Section 15 of the Code makes it mandatory that the Director "...endeavour to effect the settlement of the alleged discrimination or contravention". I cannot conceive of circumstances in which the Director can carry out that function without communicating the nature of the complaint or allegation to the potential respondent or

that a potential respondent could be taken by surprise at the hearing stage.

Even if that were to occur, the jurisdiction exists in the board of inquiry to redress that wrong by compelling particulars. Nor do I doubt that the rules of natural justice apply to a hearing before a board of inquiry and that any breach of natural justice would be open to redress by the Supreme Court of British Columbia under Section 18 of the Code.

The Regulations require that a complaint be in writing on a specific form and that a respondent receive notice of the complaint prior to the hearing. The complaint form set forth in the Regulations requires the following particularization:

(a) full name and address of the complainant;
(b) full name and address of the respondent or respondents;
(c) the date of the alleged incident;
(d) the category of discrimination alleged;
(e) details of the surrounding circumstances.

The delivery of that information, coupled with the information conveyed in the prior attempts by the Director to settle the dispute, should place a respondent in a position to understand and defend an allegation against him. Any objection to a want of particularity or error with respect to a particular fact must be viewed in the context of a fair and impartial hearing and not in the technicality of pleadings.

In my view a respondent making such an objection must satisfy the board of inquiry that he has been misled or otherwise disadvantaged by the proceedings prior to the hearing. In such a case, a board of inquiry has the jurisdiction to redress the wrong by ordering particulars and affording a respondent time to defend the allegation. In this case,

the Respondents do not allege surprise or disadvantage and the objection as to adding marital status as a category of discrimination is overruled.

In the result, I am of the opinion that the allegation is not justified and the allegation is dismissed.

DATED at the City of Prince George, Province of British Columbia, this 3rd day of June, A.D. 1977.

H. A. HOPE
BOARD OF INQUIRY

Nov. 197

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.

Yvonne Bill
Complainant

against

John Young & Rita Young
and J. & R. Trailer Sales
& Service Ltd. and Ployart's
Trailer Court
Respondent

A Board of Inquiry was appointed to hear the complaint of Yvonne Bill that she was denied the right to rent space in a trailer park because she is a Native Indian.

The Board dismissed the complaint, ruling that in spite of evidence which revealed discriminatory attitudes towards native Indian people on the part of the respondents, John and Rita Young, the act of refusal was motivated by other factors.

Mr. H.A. Hope, sitting as the Board of Inquiry, found that Yvonne Bill had good reason to believe that she had been discriminated against, since the pattern of behaviour she encountered led her naturally to this belief.

Mrs. Bill had phoned Gerrard Goueugon, a Lillooet lawyer acting on behalf of the owner of the trailer, in response to an advertisement. Mrs. Bill arranged with Mr. Goueujon to rent the trailer and paid a month's rent. However, when Mrs. Bill appeared at the trailer park, preparatory to moving in to the rented trailer, she met Mrs. Young, the owner of the trailer park, who told her that she could not move in without her approval, and Mrs. Young did not give that approval.

Mr. Hope found that the reason for this refusal was that the owner of the trailer had given instructions to both Mr. Goueujon and John and Rita Young to rent the trailer. The Youngs, unaware of this fact, resented Mr. Goueujon's intruding into their private business by renting the trailer to Mrs. Bill.

Mr. Hope ruled that it was this confusio of authority to rent between Mr. Goueujo and the Youngs that caused the refusal, and that it was not an act of race discrimination. In making this ruling, Mr. Hope stated:

> "In my interpretation of the Code, it is a function of the board of inquiry to integrate social comment into its evaluation of the complaint in the exercise of its jurisdiction under the Code and in the advancement of the social purpose contemplated in the Code."

Mr. Hope exercised his function as a social commentator to discuss the nature of the discriminatory attitude displayed by the respondent. His decision stated that an attitude of patronage and condescension is as much a manifestation of discrimination as the higher profile of prejudice that is displayed by bigotry and blind hatred. Mr. Hope said:

> "I can anticipate that Native Indians may find attitudes of condescension and patronage more demeaning and infuriating than overt bigotry. The bigot can be identified and despised for his quality of prejudice. The prejudice of patronage is more subtle and more difficult to flush from its camouflage of complacency and self-righteousness.:

Gillian T. Richmond