Court Cases-
C. A. L. F. A. vs. C. P. Air Jan 1976 (Employment, Pregnancy).

FOLDER NO. 2-33

VANCOUVER
STATUS OF
WOMEN

HUMAN RIGHTS
BOARD OF INQUIRY

August 5, 1976

IN THE MATTER OF

Jacqueline Frances Culley
& The Canadian Air Line Flight
Attendants' Association on
behalf of all female Flight
Attendants
Complainants

Canadian Pacific Airlines Limited;
Mr. G. Manning, Vice-President,
Customer Service; and Mr. E. Stones,
Manager, Flight Attendants
Respondents

Section 8 of the Human Rights Code

I am enclosing a copy of the majority decision on a preliminary motion in the above matter. Also enclosed is a copy of Mr. Jawl's dissenting opinion.

Gerald H. O'Neill
(for) Boards of Inquiry

IN THE MATTER OF

Jacqueline Frances Culley & The Canadian Air Line Flight Attendants' Association on behalf of all female Flight Attendants
Complainants

Canadian Pacific Airlines Limited; Mr. G. Manning, Vice-President, Customer Service; and Mr. E. Stones, Manager, Flight Attendants
Respondents

The Board of Inquiry met on January 17, 1976, to hear submissions on a preliminary objection in the matter of Jacqueline Frances Culley & The Canadian Air Line Flight Attendants, Association on behalf of all female Flight Attendants v. Canadian Pacific Airlines Limited: Mr. G. Manning, Vice-President, Customer Service; and Mr. E. Stones, Manager, Flight Attendants. Ms. Culley and the Canadian Air Line Flight Attendants' Association on behalf of all female flight attendants allege that the airline and two company officers discriminated contrary to Section 8 of the Human Rights Code of British Columbia, in that the company

established a policy of not allowing flight attendants to continue to fly after the thirteenth week of pregnancy.

Mr. Allan Graham, Counsel for the Respondents, made the preliminary objection that the Board does not have jurisdiction to hear the complaint. Mr. Graham submitted that the Human Rights Code of British Columbia, is ultra vires to the extent that it purports to apply to the employees of a company found to be a federal work or undertaking within the meaning of Section 92(10) of the British North America Act. In the alternative, he argues that the legislation is ultra vires to the extent that it purports to affect the field of aeronatics.

As to the latter argument Mr. Graham submitted that the Province cannot legislate so as to indirectly affect the operation of a company engaged in the field of aeronautics. He cites the case

of Johannesson v West St. Paul ([1951] S.C.R. 292). The Supreme Court of Canada held that a provincial act is ultra vires to the extent it purports to permit a municipality to pass by-laws in relation to licensing the erection of aerodromes; the Court held that the subject of aeronautics is within the exclusive jurisdiction of the Federal Parliament. In that case the municipal act directly permitted the municipality to pass by-laws in relation to aerodromes. The question before this Board is whether all provincial legislation is ultra vires to the extent that it indirectly effects the operation of a business engated in the field of aeronautics.

The parties agree, and the Board has no difficulty in finding, that the Respondent Company is an airline engaged in the field of aeronautics. We cannot however find that the Human Rights Code purports to directly regulate in

relation to the field of aeronautics. No where does the Act specifically mention airlines or aeronautics. The Act creates certain statutory civil rights for individuals resident in the Province; it does not purport to directly entrench upon the federal jurisdiction to regulate in relation to airlines. The fact that the Act may incidentally give certain rights to employees of airlines does not render the Act ultra vires. However, Mr. Graham argues that the Act is ultra vires to the extent that it purports to create statutory rights for those individuals who are employees of airlines.

Mr. Graham submits that the Respondent airline is a federal undertaking within the meaning of Section 92(10); the parties admit that the Respondent's operations are national and international in scope, crossing provincial boundaries and touching upon matters of national interest. Numerous cases have held that

airlines engaged in inter-provincial business come within the federal jurisdiction. We have no difficulty in finding that the corporate Respondent is a federal work or undertaking.

The Counsel for the Respondents further argues that the matter in question in this complaint, the right to equal opportunity in employment as provided for in Section 8 of the Human Rights Code, is a "matter" within the exclusive jurisdiction of the federal government, as defined in Section 92(10)(a) of the B.N.A. Act. The Supreme Court of Canada in Commission du Salaire Minimum v. Bell Telephone Co. of Canada ([1966] S.C.R. 767) considered the question of which "matters" come within the meaning of Section 92(10)(a). The Court held that the regulation of the field of employer and employee relationships in a federal undertaking is such a "matter."

The Counsel for the Respondents makes two submissions based on the Bell case. He argues first that the subject matter of this complaint is in pith and substance a matter within the field of employer/employee relations; it is therefore a Section 92(10)(a) "matter." In the alternative, he argues that if the subject matter is not a matter of employer/employee relations it is in any event a matter of such vital importance to the operations of the company that it comes within the meaning of Section 92(10)(a). In his alternative submission he relies upon the statement of Martland, J. at page 772 of the Bell Telephone case: "In my opinion all matters which are a vital part of the operation of an inter-provincial undertaking as a going concern are matters which are subject to the exclusive legislative control of the Federal Parliament within S.91(29)."

In considering the first submission as to the characterization of the subject matter of the complaint, the Respondent argues that a complaint of discrimination on the basis of sex is essentially a matter of employer/employee relations. The complainant's Counsel Mr. Hall, submits that we must examine the overall intent of the Human Rights Code. He submits that while discrimination legislation is not totally unrelated to employment, in that the section in question provides for equal opportunity in employment, the subject matter of the legislation is not wholly bound up with the employer/employee relationship. It deals with rights which arise in relation to the person as an individual, and secondarily as an employee.

Mr. Hall, Counsel for the Complainant, relies further upon a 1920 Privy Council decision in Workmen's Compensation Board v Canadian Pacific

Railway Co. ([1920] A.C. 184). The Privy Council held that a provincial Workmen's Compensation Act binds a federal employer. The case illustrates that statutory rights which in some aspects touch upon the employer/employee relationship of federal undertaking can still be within provincial jurisdiction. Mr. Hall submits that while the subject matter of this complaint, the statutory right to equal opportunity in employment, in some aspects touches upon the field of employer/employee relations, it is in pith and substance a statutory civil right and only incidentally relates to employment, in the same way that rights created by a Worker's Compensation Act only incidentally relate to employment.

We find that the subject matter of this complaint, the right to equal opportunity in employment, is not in pith and substance a matter relating to the employer/employee relationship.

The Human Rights Code creates a statutory right to equality of opportunity which only incidentally effects the employer/employee relationship, in that it creates the right to non-discriminatory standards in hiring and advancement just as the Worker's Compensation Act creates a statutory right to compensation when the worker is injured on the job. Equal opportunity legislation is no more essentially a matter within the field of employer and employee relations than is Worker's Compensation.

We must therefore consider Mr. Graham's second argument and determine whether the prevention of discrimination in employment is a matter of such vital importance to the federal business that it comes within the class of subjects considered by Martland, J. to be exclusively within the federal jurisdiction. The Privy Council has held that the statutory right

to compensation when injured on the job is not a matter of such vital importance as to bring it within exclusive federal jurisdiction in relation to federal undertakings. We have no decisions in relation to discrimination legislation to guide us. However, it is our finding that the statutory right to equal opportunity in employment is similarly not a matter of such vital importance to a federal business that it comes within Section 91(29).

The right to equal opportunity does not interfere with the employer's right to make hiring and promotion decisions based on reasonable criteria. It does not interfere with the day-to-day operations of the business or basic personnel decisions. The Code creates a statutory right for employees within the Province to be considered on their

individual merits when employment decisions are made.

Mr. Graham then submits for the Respondents that even if the subject matter of the complaint is not a matter within the exclusive jurisdiction of the federal government, the federal government has occupied the field of equal opportunity legislation in relation to federal undertakings. Mr. Hall argues that the federal government has not yet occupied the field. Mr. Hall cites the statement of Duff, J. in Sincennes McNaughton Line v Bruneau ([1924] 2 D.L.R. 7 where the Supreme Court held that the provincial government could provide workmen's compensation for employees of a shipping company) that workmen's compensation legislation has full effect ".....so long, at all events, as the Dominion does not in exercise of the authority mentioned enact

legislation which conflicts with and overrides that of the Province." (P. 11-12). Therefore we must decide whether the Federal Parliament has enacted legislation which conflicts with and overrrides Section 8 of the Human Rights Code in relation to the subject matter of this complaint.

Mr. Grahame argues that the federal government has occupied the field in enacting the Canada Labour Code. Section 14(a) of the Code provides for equal wages for equal work and Section 34(g) provides that no employer shall dismiss an employee solely because she is pregnant. Mr. Hall argues that neither section creates a positive right to equal opportunity but that they merely create criminal sanctions against employers who violate those particular provisions. While Section 5(1) of the Canada Labour Code provides a right of equality of opportunity, it does not extend to discrimination on the basis of sex. Therefore, we agree that the Canada Labour Code does not provide a positive general right to equality of opportunity in employment free from discrimination on the basis of sex as

provided in Section 8 of the Human Rights Code.

The Canada Labour Code does provide for dismissal solely for pregnancy but the Human Rights Code goes further and provides a positive right to be employed unless reasonable cause for suspension exists. Where the Canada Labour Code would permit dismissal for any other reason than pregnancy, the Human Rights Code requires that the employer has reasonable cause for the dismissal. The Canada Labour Code gives minimum protection to a female employee. The employer who establishes that he has any other cause for her dismissal, no matter how unreasonable or unrelated to normal personnel practices, would apparently be successful in defending himself against a complaint under the Canada Labour Code. If this hearing proceeds, the employer will have to establish that he has a valid reason

for the policy in question, a reason which is not discriminatory or unreasonable within the meaning of the Human Rights Code.

If the federal government should legislate as to equal opportunity in employment or, more particularly as to the period at which pregnant flight attendants must leave employment, then the Human Rights Code would be ultra vires the Province to the extent that it purports to regulate the subject matter in issue here. As the federal government has not yet regulated specifically in this field, the Human Rights Code applies to the subject matter of this complaint. The Canada Labour Code does not conflict with the Provincial Act as it does not extend similar rights and obligations. Until the federal government does pass such legislation, the Human Rights Code applies to the parties herein and this Board has jurisdiction

to hear this complaint.

Penny Bain

Penny Bain

Concurred with:

Chairperson

IN THE MATTER OF THE
HUMAN RIGHTS CODE OF BRITISH COLUMBIA

AND

IN THE MATTER OF Jacqueline Frances Culley & The Canadian Air Line Flight Attendants' Association on behalf of all female Flight Attendants, Complainants, and Canadian Pacific Airlines Limited, Mr. G. Manning, Vice-President, Customer Service, and Mr. E. Stones, Manager, Flight Attendants, Respondents.

DISSENTING OPINION

At the outset of the hearing, Counsel for the Respondents raised a preliminary objection that the Board of Inquiry has no jurisdiction to deal with the complaint. His primary argument is that the corporate Respondent is a federal undertaking of the kind expressly excepted from provincial legislative authority by section 92(10)(a) of the British North America Act, and that the Human Rights Code of British Columbia has no application to a federal undertaking insofar as it purports to deal with matters which are a vital part of its operations. It is argued that Section 8 of the Code, being the section which the Respondents are alleged to have contravened, deals with employer-employee relationships and as such is within the area of exclusive federal legislative competence to the extent that it applies to federal undertakings.

There is no dispute that the corporate Respondent is in fact a federal undertaking. The argument centers on defining the scope of those "matters" relating to federal undertaking with respect to which the federal parliament has exclusive legislative jurisdiction.

Counsel for the Respondents relies heavily on the decision of the Supreme Court of Canada in Commission Du Salaire Minimum v. The Bell Telephone Company of Canada ((1966) S.C.R.767). Mr. Justice Martland who delivered the judgment of the Court expressed the opinion that all matters which are a vital part of an interprovincial undertaking as a going concern are matters which are subject to the exclusive legislative control of the federal parliament. He cites as examples the regulation of rates to be paid by customers of an interprovincial telephone company and the regulation of places at which passengers of an interprovincial bus line might be picked up or to which they might be carried. He concludes by deciding that the regulation and control of the scale of wages to be paid by an interprovincial telephone company is a matter for exclusive federal control. In the course of his judgment he adopts the following statement of Abbott J. in Reference as to the Validity of the Industrial Relations and Disputes Investigation Act ((1955) S.C.R. 529 at 592):

> "The right to strike and the right to bargain collectively are now generally recognized, and the determination of such matters as hours of work, rates

> of wages, working conditions and the like, is in my opinion a vital part of the management and operation of any commercial or industrial undertaking. This being so, the power to regulate such matters, in the case of undertakings which fall within the legislative authority of Parliament lies with Parliament and not with the Provincial Legislatures."

Having considered the extent of the exception set out in section 92(10) of the British North America Act, I turn now to an examination of the scope of Section 8 of the Human Rights Code. I agree that Section 8 should be considered in the context of the entire Code. Furthermore, I concede that it does not purport to deal directly with matters such as hours of work, rates of wages or working conditions. It is much more general in its application. It deals with equality of opportunity in employment relationships. More specifically, it offers protection to employees from certain kinds of arbitrary conduct on the part of employers.

Counsel for the Complainants argues that Section 8 is aimed at discriminatory and arbitrary conduct. The context of the section is employment relationships. Other sections of the Code deal with similar conduct, but in different contexts. The pith and substance of Section 8, the argument continues, is found in the nature of the prescribed conduct and not in the particular context with which the section deals. The section, therefore, only incidentally relates to employment.

In my opinion, the test is not whether the section incidentally or primarily relates to employment. The question is whether the section purports to significantly affect the employer's right to regulate such matters as hours of work, rates or wages, working conditions and the like. I am of the view that it does. The determination of such matters is a vital part of the management and operation of any undertaking. The statutory rights created by section 8 affect the employer's right to regulate the terms of the employment relationship at least as much as the statutory right to a minimum wage. Legislation which purports to regulate this relationship in a federal undertaking is within the exclusive jurisdiction of the Parliament of Canada.

The importance of the matter to the operation of the federal undertaking is not measured by the reasonableness of the particular legislative provision, or by the ease with which the federal undertaking can comply with the provincially imposed statutory requirements. Legislation fixing a minimum wage for a federal undertaking is within federal jurisdiction whether the wage fixed is $1.00 per hour or $20.00 per hour.

I am of the view that the federal jurisdiction in the area is exclusive rather than ancillary and accordingly the question of paramountcy does not arise. If it was an area of concurrent jurisdiction it would be my view that Parliament, by the passage of the Canada Labour Code, has occupied the field. The federal

legislation purports to deal with certain kinds of discriminatory and arbitrary conduct. Section 5(1) reads as follows:

> "No employer shall refuse to employ or to continue to employ, or otherwise discriminate against any person in regard to employment or any term or condition of employment because of his race, national origin, colour or religion."

Two other sections of relevance to our inquiry are section 16(1) dealing with equal wages for equal work, and section 59.4 which prohibits dismissal on the grounds of pregnancy.

Both the federal and the provincial legislation deal with similar kinds of conduct. The mere fact that the Human Rights Code of British Columbia goes further in its application does not in itself justify its right to co-exist with the federal legislation. The federal legislation may not go as far as I might wish, but I cannot allow that consideration to distort my judgment in determining the scope of provincial legislative authority.

For the reasons I have mentioned I would accede to the preliminary objection and dismiss the complaint against the corporate Respondent.

MOHAN JAWL

HUMAN RIGHTS
BOARD OF INQUIRY

NOTICE OF HEARING

TAKE NOTICE that, under authority of Section 16 of the Human Rights Code of British Columbia, a Board of Inquiry will hear the following matter:

Jacqueline Frances Culley
& The Canadian Air Line Flight
Attendants' Association on
behalf of all female Flight
Attendants
Complainants

Canadian Pacific Airlines Limited;
Mr. G. Manning, Vice-President,
Customer Service; and Mr. E. Stones,
Manager, Flight Attendants
Respondents

Section 8 of the Human Rights Code

in the Board Room, First Floor, Burnaby, Centre, 4211 Kingsway, Burnaby, B. C., which Hearing will commence at the hour of 10:00 a.m., on the 17th day of January, 1976.

The Board may, at the request of any party to the proceedings or on its own motion, direct that a transcript be made of the proceedings. Such request in writing is to be received by the undersigned not later than five days prior to the date set for the Hearing.

DATED at the City of Victoria, in the Province of British Columbia, this 11th day of December, 1975.

Gerald H. O'Neill
(for)Board of Inquiry

was placed on leave at ----
June 15, 1975.

ATTEMPTS AT SETTLEMENT:

Ajit Mehat, Human Rights Officer, met with the representatives of C.P. Air on August 11, 1975.

BOARD OF INQUIRY

HEARING DATE: JAN 17 1976

COMPLAINT: Pursuant to Section 8, of the Human Rights Code of British Columbia

CATEGORY: Discrimination in employment on the basis of sex and without reasonable cause.

COMPLAINANTS: Jacqueline Frances Culley & The Canadian Air Line Flight Attendants' Association on behalf of all female Flight Attendants.

RESPONDENTS: Canadian Pacific Airlines Limited; Mr. G. Manning, Vice-President, Customer Service; and Mr. E. Stones; Manager, Flight Attendants.

DATE OF ALLEGED CONTRAVENTION: May 30, 1975

EXHIBITS:

"A" Complaint form signed by Jacqueline Culley, dated June 15, 1975.

"B" Complaint form signed by Barbara Southwell for the Canadian Air Line Flight Attendants' Association, dated June 15, 1975.

"C" Memorandum from E. Stones, dated May 23,1975

"D" Memorandum for all Flight Attendants from G. E. Manning, dated May 30, 1975.

REPORT: On June 15, 1975, the Canadian Air Line Flight Attendants' Association (CALFAA) on behalf of all female Flight Attendants, filed a written complaint with the Human Rights Branch alleging discrimination by Canadian Pacific Air Lines (C.P. Air) on the basis of sex and without reasonable cause. The complaint arises out of C.P. Air's memorandum dated May 30, 1975, signed by Mr. G. E. Manning. This memorandum (Exhibit "D") states that ".....the Company will not allow a Flight Attendant to continue to fly after completion of the thirteenth week of pregnancy."

On June 15, 1975, Jacqueline Culley filed a written complaint with the Human Rights Branch, alleging discrimination by E. Stones and G. E. Manning of C.P. Air on the basis of her sex and without reasonable cause. Ms. Culley received a copy of a memorandum from Mr. E. Stones (Exhibit "C") advising that she would be placed on leave of absence without pay, effective June 15, 1975 because of pregnancy in thirteenth week. Subsequently, Ms. Culley was placed on leave of absence without pay effective June 15, 1975.

ATTEMPTS AT SETTLEMENT:

Ajit Mehat, Human Rights Officer, met with the representatives of C.P. Air on August 11, 1975.

G. E. Manning, Vice President, Customer Service
G. H. Fenby, Director, Industrial Relations
E. R. Pellant, Director, Customer Service - Flight
N. L. Leach, Assistant to Vice President,
Customer Service.

Mr. Mehat asked Mr. Manning if his memorandum of May 30, 1975 was a statement of the Company's policy regarding pregnant Flight Attendants. Mr. Manning replied that it was. After some discussion, Mr. Mehat asked whether or not there was any possibility that this policy could be modified in any way, or changed altogether. Mr. Manning stated this policy had been formulated after a good deal of discussion centering on the safety of the passenger and that C.P. Air was not willing to modify it in any way.

Mr. Mehat called Mr. Fenby on September 30, 1975 to enquire whether or not C.P. Air was prepared to modify its policy. Mr. Fenley stated that no change was possible.

It has thus not been possible to effect a settlement of this complaint.

Kathleen Ruff

Kathleen Ruff,
Director,
Human Rights Code.

KR/sr

Exhibit "A"

COMPLAINT
Form 1

No. .....

HUMAN RIGHTS CODE OF BRITISH COLUMBIA

Director,
Human Rights Code,
Parliament Buildings,
Victoria, B.C. V8V 1X4

I, Jacqueline Frances Culley
(Name in full)

2998 West 24th Avenue (Street address) Vancouver, B.C. (City)

736-7860 (Home telephone) (Business telephone)

complain under section 8 of the *Human Rights Code of British Columbia* that I was discriminated against by

Mr. Gerry Manning and Mr. E. Stones
(Name in full)

Vice-President, Customer Service (Position or title) and Manager, Flight Attendants, (Company name)

respectively, Canadian Pacific Airlines Ltd. Vancouver International Airp
(Street address) (City)

(Home telephone) (Business telephone)

on June 12 (Date of offence), 1975.

NOTE—Complaint must be filed within six months—of the alleged incident.

June 15 1975 (Date) (Signature) Jacqueline Culley

Please fill in details on back.

Discrimination on the basis of

☐ race ☐ religion ☐ colour ☐ age ☐ marital status

☐ ancestry ☐ place of origin ☐ political belief ☐ criminal conviction

☒ other Sex and without reasonable cause.

Details I allege that I was discriminated against by Mr. E.Stones and Mr. G.Manning of Canadian Pacific Airlines Ltd. because of my sex and without reasonable cause, contrary to Section 8 of the Code. I received a memorandum from Mr. E. Stones dated May 23 1975 stating that I will, "..., be placed on leave of absence without pay, effective June 15 1975, due to pregnancy in 13th week. Mr. Manning has stated in a subsequent memorandum that Flight Attendants will not be allowed "..to continue to fly after completion of the thirteenth week of pregnancy."

OFFICE USE ONLY

☐ proceeding
☐ under investigation
☐ waiting for reply
☐ informal follow-up
☐ refer to
☐ send material

Result
☐ information
☐ dismiss
☐ withdrawn
☐ settled
☐ Board of Inquiry

Officer

5M 175-5252

"Exhibit "B"

COMPLAINT
FORM 1

No. _____

HUMAN RIGHTS CODE OF BRITISH COLUMBIA

Director,
Human Rights Code,
Parliament Buildings,
Victoria, B.C. V8V 1X4

I, The Canadian Air Line Flight Attendants Association on behalf
(Name in full)

of all female Flight Attendants, #450 -1665 West Broadway, Vancouver,
(Street address) (City)

738-5161
(Home telephone) (Business telephone)

complain under section 8 of the *Human Rights Code of British Columbia* that I was discriminated against by

Canadian Pacific Air Lines Limited
(Name in full)

Vancouver International Airport
(Position or title) (Company name)

Vancouver, B.C.
(Street address) (City)

273-6211
(Home telephone) (Business telephone)

on May 30, 1975.
(Date of offence)

NOTE—Complaint must be filed within six months—of the alleged incident.

June 15 1975
(Date)

(Signature) Eileen Sweetland

Please fill in details on back.

Discrimination on the basis of

☐ race ☐ religion ☐ colour ☐ age ☐ marital status

☐ ancestry ☐ place of origin ☐ political belief ☐ criminal conviction

☒ other Sex and without reasonable cause.

Details The Canadian Air Line Flight Attendants Association alleges on behalf of all female Flight Attendants that the policy of Canadian Pacific Airlines Ltd. as stated in Mr. Manning's memorandum of May 30 1975 (that, " .....the Company will not allow a Flight Attendant to continue to fly after completion of the thirteenth week of pregnancy.") discriminates against female Flight Attendants on the basis of sex and without reasonable cause contrary to Section 8 of the Code.

OFFICE USE ONLY

☐ proceeding
☐ under investigation
☐ waiting for reply
☐ informal follow-up
☐ refer to
☐ send material

Result
☐ information
☐ dismiss
☐ withdrawn
☐ settled
☐ Board of Inquiry

Officer

SM 175 3252

Exhibit "C"

To:	From: To whom club concerned
Mr. A. Jackman, Supervisor, Flight Crew Scheduling Dept. YVP	Name E. Stones Dept. Customer Service - Flight Dept. YVP

Mrs. J. Culley Date May 23, 1975

This is to advise that Mrs. J. Culley should be paid for all flights missed since her removal (April 30/75) from the flight roster.

She is permitted to resume her flights in accordance with her May block #607.

Her next flight, therefore, should be Flight 72/25 May.

Mrs. Culley will be placed on leave of absence without pay, effective June 15/75, due pregnancy in 13th week.

For your information, all inoculations, x-ray, and blood serology are waived.

E. Stones,
Flight Attendant Manager,
YVP/Latin America.

cc: Mrs. J. Culley
Mrs. J. Allan - Flt. Crew Records
Mr. R.A. Fleming
Technical File

Signature Date

Retain This Copy For Your Records

Exhibit "D"

CP Air
Grant McConachie Way
Vancouver International Airport Central
Vancouver, Canada Tel (604) 273-6211

May 30, 1975

Memorandum for ALL FLIGHT ATTENDANTS

For some time all of us involved in the management of CP Air have been concerned over the position which should be taken with regard to pregnant Flight Attendants continuing to perform in-flight duties. As you are undoubtedly aware, this matter has received considerable attention by other airlines and the Ministry of Transport. Initially, the Company adopted a wait and see position and avoided any major policy statements which might be in conflict with the law. It has now reached the stage where this position is increasing confusion and may in fact prove to be unfair to all concerned. A meeting was therefore held of representatives from Customer Service, Flight; the Medical Office; Industrial Relations; and Flight Safety. Three aspects of the problem were discussed, these being:

1. The responsibility the Company owes to our Flight Attendants.

2. The medical requirements of the Company, or of governments, which may be in conflict with the well being of the pregnant Flight Attendant.

3. The responsibility of the Company for the safety of its passengers.

We are most concerned about the effect that continued flight duties may have on an unborn child. In our opinion, there is no conclusive evidence that it is safe for a pregnant female to be employed in an in-flight capacity. The aspects which we feel require considerably more investigation are:

1. The necessity to live in a fluctuating atmosphere, particularly with regard to the reduced oxygen tension.

2. The possibility in some women that pregnancy can produce anemia and thus decrease the tolerance to reduced oxygen tension.

3. The necessity to perform reasonably arduous work over lengthy periods requiring rapid consumption of oxygen at altitude.

It is our opinion that these factors can affect or impair the development of the fetus. We feel we would not be acting in a responsible manner if we did not bring these concerns to the attention of each female Flight Attendant, especially as there is no valid research to confirm or deny them.

The provisions of the Canada Labour Code negate the ability of the Company to act to the benefit of the Flight Attendant. It is now the responsibility of each female Flight Attendant, in consultation with her personal physician, to make the decision on her own behalf as to whether or not she will continue to fly after she becomes pregnant. In this respect, therefore, the Company will no longer require Flight Attendants to go on leave of absence immediately they become pregnant.

At the same time, we wish to make it known that the Company will take no responsibility for any adverse results that may occur to the Flight Attendant or the unborn child as a result of the Flight Attendant's decision to continue flying. Part of the purpose of this memo is to emphasize this point.

At the aforementioned meeting, we also reviewed those inoculations, vaccinations and x-rays required in order that a Flight Attendant meets the qualifications established by the Company. It is considered that such requirements are in conflict with maintaining a pregnant Flight Attendant's health. Therefore, effective immediately, no inoculations, vaccinations, or x-rays will be given to, or be required of, any pregnant Flight Attendant employed by CP Air. Any Flight Attendant who has reason to suspect that she is pregnant and who is called in the normal course of events to receive an inoculation, vaccination, or x-ray should report to the Medical Office and declare at that time that she is pregnant. In such instance, a card exempting her from such inoculation, vaccination, or x-ray will be issued. This card is to be carried on all international flights and presented at any port of entry requiring specific inoculations or vaccinations. In this respect, we feel we should let you know that we anticipate some countries may deny you entry as a result of an incomplete health certificate. It would

therefore be appropriate for you to ensure at the time that you are bidding your blocks that you avoid flights into such countries. We cannot state which areas these might be at this time because it often involves ad hoc restrictions resulting from an outbreak or epidemic in some other area of the world.

I am sure you have all noticed the items in the press and the concern which has been expressed by the public as to the capability of a pregnant Flight Attendant to meet all of the physical and emotional requirements that may be involved in an emergency. Indeed, the M.O.T. were in the process of establishing regulations in this regard, but as a result of representations by CALFAA, the regulations have not been published. Nevertheless, we have a responsibility as a public air carrier to ensure the safety of our passengers. After much consideration, we have decided that we must establish a rule which in our opinion will maximize the probability that any emergency would be met with the full capability of all Flight Attendants. In this respect, for safety reasons, therefore, the Company will not allow a Flight Attendant to continue to fly after completion of the thirteenth week of pregnancy.

Any Flight Attendant who wishes to continue employment with CP Air in another capacity during her pregnancy should contact the Personnel Placement Office immediately upon learning she is pregnant and apprise them of her qualifications so that she may be considered for any vacancies which may occur. It is the Company's position that Flight Attendants so doing will be given preference for any vacancies for which they possess the minimum qualifications. The rate of pay offered will be commensurate with the individual's qualifications and the scale of the position.

It is my hope that the majority of you will understand that this decision has not been arrived at lightly and that it is in no way intended to deny an employee her rights.

G. W. Manning