MARCH 1976

HUMAN RIGHTS BOARDS OF INQUIRY

The following were abridged from decisions filed during January 1976 under the Human Rights Code of British Columbia.

ADVERTISEMENT REFUSED

A complaint by the Gay Alliance Toward Equality against the Vancouver Sun.

Section 3 of the Human Rights Code prohibits discrimination against any person or class of persons with respect to any accommodation, service, or facility customarily available to the public, unless reasonable cause exists for such discrimination.

On November 14, 1974 Maurice Flood filed a complaint under the Human Rights Code on behalf of the Gay Alliance Toward Equality, alleging that the Vancouver Sun newspaper had refused to publish the following advertisement submitted by the Gay Alliance Toward Equality: Subs. To GAY TIDE, gay lib paper $1.00 for 6 issues. 2146 Yew St., Vancouver.

A hearing was held on February 28, 1975 before a Board of Inquiry consisting of Joe Wood, Rod Germaine, Robert Moore, John Gebbie and Dorothy Smith. The judgment of Mr. Wood, in which Rod Germaine, Robert Moore and John Gebbie concurred, is summarized below. Dorothy Smith agreed with the conclusion of this judgment, but did not agree with the interpretation made in the judgment concerning the reasons given by the respondent for their decision not to publish the advertisement for the Gay Alliance Toward Equality.

The evidence clearly established that the Vancouver Sun, a subsidiary of Pacific Press Ltd., customarily makes available to members of the public the facilities of its classified advertising section.

Unquestionably any facility such as the Vancouver Sun must employ certain standards when accepting advertisements from the public. The question to be dealt with here is not the necessity of imposing standards upon such a facility, but the reasonableness of a particular standard which, it is asserted, has given rise to the denial under review here.

The respondent was worried or afraid that the advertisement in question would offend <u>some</u> of its subscribers. When one considers this rationalization for a moment, it appears to bear very little merit. The notion that the content of a newspaper, whether it be advertising or editorial, be governed by this standard is ludicrous. Indeed, Mr. Toogood, the Director of Advertising and Marketing for the Sun, admitted that complaints from subscribers would not necessarily cause the paper to alter or remove a given advertisement, depending on whether or not they (the individual components of management) thought that they were right in publishing the item in question.

In any event the apparent policy inconsistency between the Editorial Department on the one hand and the Advertising Department on the other would tend to belie the suggestion that the management of the respondent newspaper is truly concerned about offending some of its subscribers. The evidence was clear that the Editorial Department has quite a different policy with respect to homosexual content. Articles of an editorial as well as a reporting nature containing references to homosexuals or homosexuality and general discussion about the subject matter frequently appear in the pages of the respondent newspaper.

The notion that a subscriber or reader, who would not be offended with such written material, would take umbrage with an advertisement such as that tendered by the complainant herein seems to the Board to be a little farfetched. Mr. Toogood conceded that the advertisement in issue here was not, on its face, lascivious, obscene or suggestive. Nothing in the advertisement advocates homosexuality or suggests that the Vancouver Sun advocates or encourages homosexuality.

While on the subject of inconsistencies, it is perhaps pertinent to point out that the Advertising Department of the respondent does not always appear to enforce its policy of protecting its subscribers and readers from material that might possibly offend some of them. In the October 28, 1974 edition of the respondent newspaper, a number of advertisements appear dealing with theatres and movie houses with warnings of the British Columbia Film Classification Director to the effect that the film advertised contain brutality, coarse language and are completely concerned with sex.

These movie advertisements, of course, represent a rather more valuable source of revenue to the respondent, the smallest of them, on the evident of Mr. Toogood, probably costing something in the neighbourhood of $50 a day. By contrast, the advertisement under con-

sideration here would have netted the respondent approximately $15 for the four days that it was intended to be displayed.

The central theme, which continually reappeared in respondent's testimony, was to the effect that the policy in question was predicated on a desire to protect a reasonable standard of public decency and good taste. This is a worthy motive for any policy, and the Board accepts this suggestion seriously. The strength of this submission is weakened to some extent, however, by the acknowledgment of Mr. Toogood that, in arriving at this policy, no guidance was sought or received from those provisions of the Criminal Code which purport to effect the same end. Nor is the Criminal Code the only already established norm of public taste and decency which is ignored by the respondent. With respect to film or movie advertisements, which have already been the subject of some comment, Mr. Toogood acknowledged that no regard was paid to the File Classification Director's decision on films.

The strength of the respondent's submission that its policy is found upon a worthy concern for standards of public decency and good taste is further weakened by the frank admission on the part of Mr. Toogood that the publication GAY TIDE itself played no part in the determination made by his department not to publish the advertisement submitted by Mr. Flood. The decision not to accept the advertisement in question was, in fact, made before the advertisement itself was even submitted for publication.

Applying the tests to be found in some of the relevant Appellate Court decisions dealing with standards of decency and the tests by which that standard is to be judged, the Board concluded that there is nothing of an indecent, lascivious, or improper nature contained anywhere in an issue of the GAY TIDE the Board examined.

Apart from a general theme of urging all homosexuals to recognize themselves as a first step towards greater public acceptance, the publication does not purport to advocate homosexual activity for all members of society, nor does it purport to counsel heterosexuals to change their way of life. Nothing contained in the paper could be considered illegal. Nothing in the paper advocates nor counsels the commission of an illegal act by any person.

Had Mr. Toogood or any other member of the respondent's management at least taken the trouble to consider carefully the content of Exhibit 8, one might have viewed their asserted concern for standards of public decency with somewhat greater approbation.

Assessing all of the evidence offered on the question of the reasonableness of the cause or motivation behind the respondent's refusal to publish the complainant's advertisement, the Board comes to the inevitable conclusion that the real reason behind the "policy" of the respondent was not a concern for any standard of public decency, but was, in fact, the personal bias against homosexuals and homosexuality on the part of various individuals within the management of the respondent.

Notwithstanding the failure of the respondent to meet the test of sincerity with respect to its purported concern for standards of public decency, the issue raised is a valid one, and presents a dilemma of sorts which must be resolved. On one side of the dilemma is the argument that society must strive to define and protect a strong acceptable standard of public decency. Such a standard, while flexible enough to enable it to respond to the ever changing attitudes displayed by the constituent elements of our community, must, at the same time, have sufficient rigidity and strength to ensure the protection of those basic concepts of decency and propriety that are fundamental to a civilized way of life.

On the other side of the dilemma is the assertion, exemplified by the Code, that society must actively seek to protect those portions of its citizenry who are different in some way, and who thus attract to themselves acts of discrimination that are fostered by preconceived and unreasonable judgments or opinions marked by suspicion, fear, intolerance or hatred.

The answer to the dilemma lies in the willingness of a mature society to recognize and to accept that people are different, and to tolerate those differences. Surely now in the 1970s our fear of the different or the unusual must be overcome by our confidence in the strength of our social fabric taken as a whole. To recognize and respect the beliefs or practices of others without necessarily agreeing or sympathizing with them is to show the sort of tolerance that is the mark of a truly civilized and mature society.

So it is that we can safely conclude that the accepted standards of decency which we wish our society to maintain is in no way threatened or challenged by our taking, as a society, a tolerant and mature approach to those homosexuals who are not breaking the law, and who seek only the right to live normally in

society without fear of persecution or discrimination.

By refusing to publish the advertisement in question, by denying homosexuals the right to avail themselves of advertising which would assist in the circulation of their newspaper--a newspaper which is devoted purely to a legitimate and informative discussion of homosexuality--the respondent is in fact restricting the right of homosexuals to their enjoyment of freedom of the press.

In the wide field of legislative authority that the provinces do have over newspapers is included the authority to require newspapers within the Province of British Columbia to adopt advertising policies that are not in violation of the principles set out in the Human Rights Code.

After considering all the evidence offered at the Hearing, and the various arguments put forward by the parties to this complaint, this Board is of the opinion that no reasonable cause existed for the refusal of the respondent to publish the advertisement submitted by the complainant. The allegation of the complainant is therefore justified; and, accordingly, pursuant to the powers vested in it by Section 17 (2) of the Human Rights Code, this Board orders the respondent to cease contravening Section 3 (1) of the Human Rights Code. Specifically the Board orders the respondent to make the facilities of its classified advertising section available to the complainant. It goes without saying that any advertisement submitted by the complainant to the respondent for publication must, of necessity, meet those proper standards of decency and legality, insofar as its form and substance are concerned.

The Board further orders the respondent to refrain from committing the same or similar contravention of Section 3 (1) of the Code in the future.

Section 17 (2) (c) of the Code provides for an order of compensation, not exceeding $5,000, in such cases where the Board is of the opinion that the person who contravened the Act did so knowingly or with wanton disregard where the person discriminated against suffered aggravated damages in respect of his feelings or self-respect.

This Board has previously ruled that the punitive results of applying this section of the Code should be reserved for those extreme or aggravated cases where the full meaning of the terms "wanton disregard" and "aggravated damages" can be given effect to. In this case the evidence clearly established that the complainant sought an opportunity to test the effectiveness of the Human Rights legislation, and, accordingly, it would be difficult to find that the complainant had suffered aggravated damages in respect of its feelings or self-respect. Accordingly, the Board makes no order under this subsection of Section 17.

Section 17 (3) of the Code entitles the Board to make such orders as to costs as it considers appropriate. Attempts were made, firstly by the complainant itself and secondly by the Human Rights Branch, to negotiate a settlement of this complaint. Had these attempts been successful, the necessity of a Board of Inquiry hearing would have been obviated. Under these circumstances, there would appear to be no reason why the Board should not order costs against the respondent. The Board assesses costs in the amount of $500, and orders that the respondent pay that sum forthwith to the complainant.

MARCH 1976

DISCRIMINATION IN ACCOMMODATION

A complaint by Ms. Jean Sam against Paul Tymchischin and the Tweedsmuir Hotel Company Ltd.

This Board of Inquiry was convened, on January 8th, 1976, in the Village Council Chambers in Burns Lake, British Columbia. The complainant was present and represented by R.J. Jephson. Ms. Kathleen Ruff appeared on behalf of the Human Rights Branch. Neither of the respondents appeared before the Board of Inquiry, nor did anyone appear on their behalf.

The Board of Inquiry hearing dealt with a complaint dated June 5, 1975, signed by Jean Sam, alleging a violation of Section 3 (1) of the Code. The complaint alleges discrimination against her by the respondents Paul Tymchischin and the Tweedsmuir Hotel on the basis of race and colour.

When the Board convened, it became apparent that the respondents were not in attendance and that nobody appeared before the Board on their behalf. There was, however, a letter on the stationary of the Tweedsmuir Hotel, awaiting the Board on its arrival in Burns Lake. The letter was dated January 5th, 1976, and stated as follows:

"This is to inform you that I cannot attend your hearing scheduled for January 8th, 1976, pertaining to your Human Rights Issue, reason being - this day is set aside for my Ukrainian Christmas."