

*2 years after O made*  
*John Doe*  
*James*  
IN THE MATTER OF THE HUMAN RIGHTS CODE OF  
BRITISH COLUMBIA, S.B.C. 1973, CHAPTER 119;

AND IN THE MATTER OF THE COMPLAINT OF ELIZABETH  
GARNETT UNDER THE HUMAN RIGHTS CODE OF BRITISH  
COLUMBIA AGAINST KOMPLEAT INDUSTRIES INCORPORATED  
CARRYING ON BUSINESS UNDER THE FIRM NAME OF  
KOMPLEAT JANITORIAL SERVICES.

MEMORANDUM OF AGREEMENT

BETWEEN:

DIRECTOR OF THE HUMAN RIGHTS  
BRANCH OF BRITISH COLUMBIA,

AND:

ELIZABETH GARNETT,

AND:

KOMPLEAT INDUSTRIES INCORPORATED  
carrying on business under the  
firm name of KOMPLEAT JANITORIAL  
SERVICES.

BY THIS MEMORANDUM OF AGREEMENT, Kompleat Industries  
Incorporated carrying on business under the firm name of  
Kompleat Janitorial Services (hereinafter referred to as  
the Respondent) in consideration of discontinuance of  
these proceedings of Elizabeth Garnett (hereinafter re-  
ferred to as the Complainant), hereby confirms and declares  
that they support and adhere to the statutory provisions  
and principles of the Human Rights Code of British Columbia  
and, without limiting the generality of the foregoing, under-  
take as evidence of their good faith to implement without  
delay the following specific acts and assurances.

1. ~~the Respondent hereby agrees that all applicants for~~



heavy duty janitorial work will be evaluated on individual merit without reference to the applicant's sex. ✓

2. The Respondent hereby apologizes to the Complainant for any inconvenience or injury to self-respect. ✓

3. The Respondent hereby agrees to pay Two Hundred Dollars (\$200.00) to the Human Rights Branch, Ministry of Labour, for expenses incurred in setting up a Board of Inquiry. ✓

4. Without the admission of any liability but rather as a demonstration of their good faith in entering into this Memorandum of Agreement the Respondent agrees to pay to the Complainant Eight Hundred Dollars (\$800.00).

5. The Respondent agrees that it will keep on file for six months after receipt of all applications for employment which are received.

6. It is hereby understood and agreed that compliance with these terms of this Memorandum of Agreement is no admission of liability nor is it to be construed as a admission of liability on the part of the Respondent.

7. The Complainant hereby relinquishes any and all claims against the Respondent arising out of circumstances relating to this complaint under Section 8 of the Human Rights Code of British Columbia.

DATED at the City of Vancouver, Province of British Columbia, this                      day of November, 1978.



P. Lane  
WITNESS

P. Lane

\_\_\_\_\_

K. R. M.  
DIRECTOR OF THE HUMAN RIGHTS  
BRANCH OF BRITISH COLUMBIA

Elizabeth Garnett  
ELIZABETH GARNETT

\_\_\_\_\_  
KOMPLEAT INDUSTRIES INCORPORATED  
carrying on business under the  
firm name of KOMPLEAT JANITORIAL  
SERVICES



HUMAN RIGHTS

BOARD OF INQUIRY

? re Minister  
disclosure

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"Report"  
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IN THE MATTER OF:

Elizabeth Garnett, Complainant

Peter Weissbach, carrying on business  
under the firm name and style of  
business of Kompleat Janitorial  
Services

Respondent

Peter Weissbach, Respondent

Director, Human Rights Code, a party  
pursuant to Section 16(3) of the  
Human Rights Code of British Columbia

BOARD:

Josiah Wood, Esq., Chairman

REASONS FOR JUDGMENT  
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On December 5th, 1977, a Board of Inquiry was established under Section 16 of the Human Rights Code by Order of the Minister of Labour to hear and determine a complaint by Elizabeth Garnett against Kompleat Janitorial Services. The complaint was made under Section 8 of the Human Rights Code of British Columbia and alleged that Ms. Garnett had been discriminated against by Kompleat Janitorial Services in September of 1976 and on October 18th of 1976, the basis of the complaint being discrimination in employment because of sex.



By order of the Minister of Labour  
on the above-noted date I was appointed the sole  
member of the Board of Inquiry.

When the matter came on for hearing  
on June 29th, 1978, Counsel for the Respondent raised  
a preliminary objection to the jurisdiction of the  
Board to hear the complaint. The essence of Counsel's  
point was that the Report to the Minister was  
deficient in a number of ways and that accordingly  
the discretion exercised by the Minister pursuant  
to Section 16(1)(a) of the Human Rights Code could  
not be properly exercised.

The first complaint taken with the  
Report related to the fact that the original complaint  
which was signed on November 4th, 1976, by the  
complainant, had been amended some time in May of  
1977 to add the words "September 1976 &" above the  
date October 18th, 1976. The effect of this  
amendment was to allege two separate incidences  
of discrimination, one having occurred in September  
of 1976 and the other on October 18th, 1976.  
Counsel's point was that the Report to the Minister  
did not include a "true" copy of the complaint because  
the amendment occurred subsequent to the original  
complaint being signed and prior to the Report being  
delivered to the Minister.



Secondly, Counsel alleges that the report sent to the Minister pursuant to Section 16(1) of the Human Rights Code was deficient in that it did not include copies of all documentary exhibits obtained by the Director during his investigation. There was no evidence before the Board that any such documents were in fact obtained. Thirdly, Counsel complains that the report to the Minister did not contain a summary of the investigative findings of the Director and fourthly the report was deficient in that it contained no summary of the efforts made to effect settlement of the alleged discrimination or contravention of the Code.

Counsel relies on the definition of "report" as found in S.2 of the Regulations passed pursuant to the Human Rights Code. This definition states:

"Report" means a report of the Director to the Minister of Labour under Section 16(1) of the Code and includes

- (i) a true copy of the complaint or allegation made under Section 15 of the Code,
- (ii) a copy of each documentary exhibit obtained by the Director during his investigation,
- (iii) a summary of the investigative findings of the Director, and



- (iv) a summary of the efforts made to effect a settlement of the alleged discrimination or contravention of the Code."

Counsel for the Respondent is essentially challenging the exercise of ministerial discretion on the grounds that there was no proper basis for the Minister to have exercised his discretion pursuant to Section 16 of the Human Rights Code. During the hearing of this preliminary objection I questioned both Counsel as to my jurisdiction to go behind the order of the Minister. Both Counsel indicated they had reviewed the law in this matter and can find no authority directly on point.

I am satisfied that I have no jurisdiction to hear what is essentially an application for judicial review. The procedure and indeed the Statutory authority for entertaining such applications is contained in the Judicial Review Procedure Act, S.B.C. 1976, c.25 and amendments thereto. It is my view that in the Province of British Columbia only the Supreme Court has the jurisdiction to entertain a challenge of the exercise of ministerial discretion and accordingly I rule that I have no jurisdiction to question the exercise of that discretion by the Minister in this case.



The next matter raised was an application by Counsel for the complainant to amend to complaint attached to the Report to the Minister by deleting reference to the September 1976 incident of alleged discrimination. Secondly Counsel for the complainant applied to amend the Form 1 complaint by substituting Kompleat Industries Incorporated carrying on business under the firm name of Kompleat Janitorial Services in the place of "Manager - Compleat Janitorial Services."

The first application to amend it seems to me is perfectly proper and should be allowed. Counsel for the complainant concedes that at the time when the September incident was added to the complaint form the limitation period provided for in Section 23(1) of the Human Rights Code had expired. If he is correct then the amendment itself was a nullity and of no effect. It does not appear to me that the Respondent suffers any prejudice if this application to amend is allowed and accordingly I order the Form 1 complaint amended as requested.

The second application for amendment by the complainant's Counsel, however, gives me cause for greater concern. It is apparent that in this case as in many others that the complainant has had difficulty establishing the correct identity of the



entity against whom the complaint is raised. In this case it appears to be fairly common ground that the business of the Respondent is offered to the public in the form of "Kompleat Janitorial Services". There is no real evidence to establish whether the name "Kompleat Industries Incorporated" appears anywhere in the public advertising of the Respondent. Apparently the stationary used by the Respondent indicates that Kompleat Janitorial Services is a division of Kompleat Industries Incorporated.

No evidence is offered as to why a complaint signed on November 4th, 1976, apparently did not raise a reply from the Respondent within six months. Had that occurred the error would have been apparent and an amendment could have been sought within the time limit required by S.23 of the Human Rights Code.

There is no evidence as to the point in time at which the Director's Office became aware of the change of name from Kompleat Janitorial Services Ltd. to Kompleat Industries Incorporated, which change of name apparently occurred on October 7th, 1976, just eleven days before the alleged incident complained of by Ms. Garnett. Prior to that date it would not have



been proper for the company to have used any name other than Kompleat Janitorial Services Ltd. There is no evidence to indicate what if any steps were taken by the Company after October 7, 1976, to advise the public of the name change.

Had the complaint originally been against Kompleat Janitorial Services Ltd. there would, of course, be no problem since Section 244(3) of the Companies Act, being R.S.B.C. 1973, (2nd session) Chp. 18 and amendments thereto provides:

"No change of a name of a company affects any of its rights or obligations, or renders defective any legal proceeding by or against it, and any legal proceeding that may have been continued or commenced against it under its former name may be continued or commenced against it by its new name."

What troubles me, however, is that the original complaint appears to have been against the Manager of the incorrectly described entity and not against the entity itself. All parties seem to agree that this individual is Mr. Weissbach, however, Counsel for the complainant indicates that he is not intending to proceed against Mr. Weissbach personally and that the complaint should be amended in such a way as to name as the Respondent only the correct corporate entity. After some considerable hesitation it seems to me that the issue is resolved by Paragraph 12 of

apprentice programs established by the regulations of the FIAA.



the statement of admitted facts. In that paragraph both parties agree that at all material times to this complaint Peter Weissbach was the President of a limited company known as Kompleat Industries Incorporated which company carried on business under the name of Kompleat Janitorial Services. In addition to that Mr. Goepel conceded that the Respondent was not in any way mislead by the "misdescription" in the original Form 1 complaint. Accordingly it seems to me that I should give effect to the spirit and intent of the legislation which was designed to be remedial and grant the requested amendment.

I have reviewed with some care the decision of Mr. Justice Hutcheon in the matter of Russell Daniel Burns (Appellant/complainant) versus The United Association of Journeyman of the Plumbing and Pipefitting Industry, Local 170 and Piping Industry Apprenticeship Board (Respondent). In that case Burns had brought a complaint against the Piping Industry Apprenticeship Board (hereinafter referred to as the "PIAB") on the grounds that he had been discriminated against with respect to age because his apprenticeship had been terminated when it was discovered that he was too old for the apprentice programme established by the regulations of the PIAB.

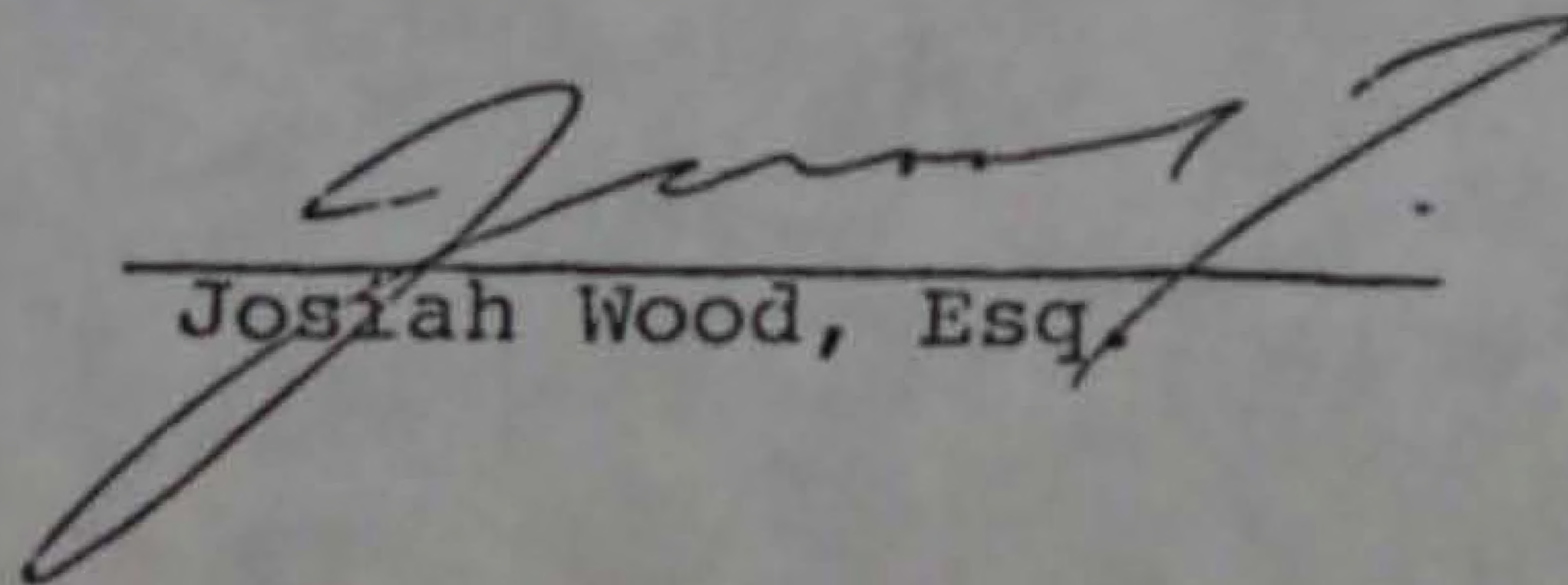


The PIAB was a committee established by virtue of the terms of a collective agreement between the United Association of Journeyman of the Plumbing and Pipefitting Industry, Local 170 and the Mechanical Industrial Relations Association of British Columbia. It was clear that the PIAB was not one of those entities against whom a complaint can be brought pursuant to the provisions of the Human Rights Code. An application to amend by adding the Union and the Industrial Relations Association in question as parties was not made to the Board of Inquiry in that case and Mr. Justice Hutcheon held that he had no jurisdiction to make such an amendment at the appeal stage. It seems to me that in that case there was more than just a misdescription of the correct entity. There was, in fact, a correct description of an entity who by Statute could not be a party to the complaint. The application to amend was in fact an application to substitute parties. In my view, the case is quite distinguishable from the one before the Board.

Accordingly there will be an order granting the amendment requested by Counsel for the complainant. Before concluding I should draw Counsel's



attention to the fact that there appeared to be some confusion as to exactly what information was attached to the Report which went to the Minister and indeed what documents if any were seized during the course of investigation. I trust that before this matter resumes for hearing Counsel for both parties will ensure that there is complete disclosure on both sides so that the matter may proceed uninterruptedly.

  
Josiah Wood, Esq.

Vancouver, B.C.

August 17th, 1978.