

HUMAN RIGHTS BOARDS OF INQUIRY

REFUSAL TO HIRE

Kathleen Grafe,
(Complainant)

- and -

Sechelt Building Supplies (1971) Ltd.
(Respondent)

- and -

Director, Human Rights Code

Board:

Beverley M. McLachlin

Date of Hearing:

March 7, 1979

Effective Date of Decision:

May 17, 1979

Place of Hearing:

Vancouver, British Columbia

A Human Rights Board of Inquiry was appointed to hear the complaint of Kathleen L.A. Grafe that the respondent, Sechelt Building Supplies (1971) Ltd.,

- (1) expressed to her a limitation, specification and preference as to the sex of an applicant for employment, contrary to Section 7 of the Human Rights Code, and,
- (2) refused to employ her because of her sex, contrary to Section 8 of the Code.

The respondent did not appear before the Board nor did it send anyone to represent it. The Board determined that the respondent had been given reasonable notice and opportunity to be heard, and therefore decided, upon motion by the counsel for the director, to proceed with the hearing in the absence of the respondent.

The complainant contended that she was referred by the Canada Manpower office in Sechelt to the respondent for a labouring job. While Ms. Grafe was applying for the job, employees of the respondent made enquiries of her which she felt indicated that the respondent did not want to hire females for the job. Ms. Grafe went back to the Manpower office and related to the counsellor the events that transpired at the respondent's establishment. The counsellor contacted the respondent by telephone; at the end of the telephone conversation, he said to Ms. Grafe that he agreed with her that "... girls need not apply with the company."

With respect to the Section 7 complaint, the Board found that after reviewing written and oral enquiries of the applicant, and weighing the balance of probabilities, violation of Section 7 was not

established.

The Section 8 complaint was upheld by the Board. The decision states,

there is no doubt that Kathleen Grafe was refused employment within the meaning of Section 8(1)(a). She was unemployed for a period of two weeks after her application, and was not called. The two positions available were filled by men on the day of her interview and the following day, respectively. She met the qualifications on the Canada Manpower form.

... the evidence shows that the 'cause' of the company's refusal to employ Kathleen Grafe was her light weight. A negative decision was made against her on a basis of class or category to which she supposedly belongs — the category of relatively light people — rather than on her individual ability. This raises a *prima facie* case of discrimination. Moreover, a standard precluding employment of persons of light weight has a disproportionate effect on women.

Ms. Grafe weighs 135 pounds. The Board stated,

there is no evidence that a person weighing 135 pounds could not do the job ... I must therefore conclude that the onus upon the company of establishing its hiring practice was reasonable has not been discharged. It follows that a violation of Section 8 of the Code had been established. Since the criterion in question, namely, light weight, is one affecting a disproportionate number of women, it can be said to constitute discrimination on the basis of sex, in accordance with the reasoning

of the Foster case, and within the terms of the complaint.

The Board awarded \$280 to the complainant to compensate her for loss of wages from the date of the refusal to the time she obtained other employment.