

IN THE MATTER OF A COMPLAINT BY NASIM KHAN
AGAINST SHERMAN PIESCHEL

<u>Board of Inquiry:</u>	<u>Present:</u>
Sholto Heberton (Chairman)	Gary Carsen
Mohan Jawl	Nasim Khan
Angus MacDonald	Rani Khan

Date of Hearing: March 21, 1975
Place of Hearing: Room 226, Courthouse, Nanaimo, B. C.

The complainant alleged that the respondent had refused occupancy in a trailer in a trailer court on the basis of race. It was also alleged that the respondent had made racial slurs concerning the complainant and his family. Because these events occurred prior to the proclamation of the Human Rights Code in October 1974, the case was decided under the 1969 Human Rights Act which is no longer in effect.

The Board held as follows:

"The 1969 Human Rights Act did not prohibit a person from addressing another as a "black bastard" or as a "blackie bastard", the two expressions which we heard in evidence. The question before our Board was whether Mr. Pieschel, in asking for the daily rent of \$20.00 per day was discriminating with respect to a term or condition of the tenancy because of the race or colour of the person.

"We repeat, the problem is to decide whether there has been discrimination under the old Act. There are possible explanations for the treatment other than discrimination and we have considered them. We conclude that we should draw the inference from Mr. Pieschel's language that this was a case where he discriminated against a person with respect to a term or condition of the tenancy because of the race or colour of the person. We conclude that section 14(6)(b) of the old Act entitles Mr. Khan to receive a written apology from Mr. Pieschel. We conclude from section 31(1)(c)(i) of the Interpretation Act that we have the authority to order Mr. Pieschel to apologize in writing to Mr. Khan.

"We hereby order:

- (a) that Mr. Pieschel refrain from committing the same or a similar contravention in future,
- (b) that within ten days of service of this order upon him, Mr. Pieschel deliver a written apology addressed to Mr. Khan at his address at 3651 Departure Bay Road, Nanaimo, B. C.,
- (c) the Director of the Human Rights Code to serve or cause to be served these reasons containing this order upon Mr. Pieschel at Neilson's Trailer Park, to record the time and date of such service upon Mr. Pieschel in her records, to check with Mr. Khan on whether he has received an appropriate apology from Mr. Pieschel and to inform the Attorney General of the Province of British Columbia if that apology is not so received by Mr. Khan, and
- (d) the Director of the Human Rights Code to inform Mr. Pieschel in a cover letter separate from these reasons that section 24 of the current Human Rights Code provides that a person who contravenes an order of the Board of Inquiry is guilty of an offence and is liable, on summary conviction, to a fine of not more than \$1,000."

Effective date 15 April 1975.

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Human Rights Code of British Columbia

IN THE MATTER OF A COMPLAINT BY NASIM
KHAN AGAINST SHERMAN PIESCHEL

Board of Inquiry:

Sholto Heberton (Chairman)
Mohan Jawl
Angus Macdonald

Present:

Gary Carsen
Nasim Khan
Rani Khan

Date of Hearing:

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Room 226, Courthouse, Nanaimo, B.C.

Nasim Khan ("Mr. Khan") and his wife, Rani Khan ("Mrs. Khan"), are of East Indian origin. They were seeking accommodation in the Nanoose Bay area in August, 1974. Their family included four children and one other adult, Mrs. Khan's mother.

Sherman Pieschel ("Mr. Pieschel") operated a tent and trailer park under the name Neilson's Trailer Park. After some negotiations concerning the price, Mr. Pieschel rented space for three tents to Mr. and Mrs. Khan. The seven-person Khan family moved into their tents on the property in question.

Mr. Khan had had heart trouble. Mrs. Khan was seeking more substantial accommodation for him than the tents. She discussed obtaining such accommodation with Mr. Pieschel. There were two types available in the Neilson's Trailer Park property, cabins and trailers. At least some of the trailers were owned by persons other than Mr. Pieschel. The cabins, on the other hand, were all owned by Mr. Pieschel himself.

When Mrs. Khan discussed the question with Mr. Pieschel, it appeared that one of his cabins would soon be coming available at a rent of \$125 per month. The Khans would have accepted that cabin at that rent but preferred to take a trailer if a suitable one became available earlier. On Sunday, September 8, 1974, two persons who had been renting a trailer moved out and offered the keys to the Khans. The rent had been paid until the following Wednesday. The trailer contained some personal property belonging to other

people and the departing persons asked the Khans to look after that property. Mr. and Mrs. Khan moved into the trailer, their intent being that their children and Mrs. Khan's mother would remain living in the tents. That evening, Mr. O'Hara, the owner of the trailer, visited the Khans and they discussed the rent with him. Mr. O'Hara agreed to rent the trailer to the Khans for \$175 a month, plus a security deposit of \$50. He explained, however, that before the transaction could be concluded, the Khans would have to settle the arrangement with Mr. Pieschel. The evidence before the Board of Inquiry ("the Board") did not reveal the nature of the arrangement between Mr. O'Hara and Mr. Pieschel except that it was very clear to the Khans that Mr. Pieschel had the ultimate control over who should occupy trailers on the property.

The following day, Monday, September 9, 1974, Mr. and Mrs. Khan went to see Mr. Pieschel about renting the trailer. Mr. Khan did not join the conversation, leaving the discussion to Mrs. Khan in view of his ill health. The Khans intended to stay in the trailer only five days because they had arranged other accommodation after that time. They were, however, content to pay the full rent requested by Mr. O'Hara because they were confident that they could sublet the trailer for the remaining part of the month or that, if they were able to do so, they would be able to obtain a refund from Mr. Pieschel. The point of obtaining a refund did not arise, however, because Mr. Pieschel refused to let the trailer on that basis. He insisted that they pay a daily rent of \$20 per day for the trailer. Mrs. Khan refused to do so and the conversation terminated with Mr. Pieschel describing her as a "black bastard" and a "blackie bastard". Mr. and Mrs. Khan stayed in the trailer that night.

The Khans left the trailer park in the morning of Tuesday, September 10, 1974. When they returned, they found that their possessions and the personal property owned by the people described above had been removed from the trailer. The Khan children had been forced to take down the tents on the tenting area and one of the Khan children, who was not old enough to be licenced to drive a car, had been forced by Mr. Pieschel to drive a car owned by the Khans from the property.

These facts give rise to a number of legal problems.

When the events described above took place, section 9 of the Human Rights Act, S.B.C. 1969 c.10 stated:

"9. No person, directly or indirectly, alone or with another, by himself or by the interposition of another, shall...

(b) discriminate against any person or class of persons with respect to any term or condition of the tenancy or purchase of any commercial unit or any self-contained dwelling unit

because of the race, religion, colour, nationality, ancestry, or place of origin of that person or class of persons."

That statute was repealed by the statute establishing the Human Rights Code of British Columbia* which latter statute was proclaimed as coming into force on October 10, 1974. The new Human Rights Code contains substantially similar language to that contained in section 9 quoted above. See section 5(1)(b). However, the new statute contains different procedures for adjudication and enforcement. Under the old statute, complaints were investigated by the Director of the Human Rights Act and were brought before the Human Rights Commission for decision making. Under the new Code, the Director of the Human Rights Code has the responsibility of investigating complaints and reporting to the Minister of Labour who may then refer the matter to a Board of Inquiry such as ours. Boards under the new Code may give a different range of orders than the Commission could under the preceding Act (compare new section 17 with old section 14). Under both statutes the orders could be made orders of the Supreme Court and the orders could be enforced by criminal proceedings.

The relief requested in this case is a written apology. Such relief could be granted under the old Act (section 14(6)(b)). Section 17 of the new Code does not appear to grant the power to order an apology. The Interpretation Act, S.B.C. 1974, c.42, section 31(1)(b) provides that the Board may hear this case in accordance with its own procedures. Section 31(1)(c)(ii) provides that the procedures under the new Code shall be followed in the enforcement of rights existing or accruing under the old Act. We conclude that Mr. and Mrs. Khan had a right to an apology existing or accruing under the old Act and that we have jurisdiction under the new Code to order that an apology be given.

Our second legal problem is that Mr. Pieschel's name does not appear on the complaint form itself. The complaint form provides for inserting the place where the alleged discrimination occurred and for inserting the name of the person who was alleged to have committed it. In the

* S.B.C. 1973(2) c.119 as amended by S.B.C. 1974 c.87

complaint form in this case, only the location is referred to. The Officer's Report also refers only to Neilsen's Trailer Park and identifies it as the "Respondent". The author of that report, Gary Carson, Assistant Director, Human Rights Code, gave evidence at the hearing. Mr. Carson testified that the Notice of Hearing was personally served on Mr. Pieschel. The Notice of Hearing (to which the Officer's Report and Complaint were attached) clearly identifies Mr. Pieschel as "Respondent". We infer that in preparing the Officer's Report, Mr. Carson took the position that Mr. Pieschel was doing business as Neilsen's Trailer Park. We think that it would be preferable if the Officer's Report named the individual concerned as the respondent, notwithstanding that that person may have carried on business under another name. However, we do not believe that Mr. Pieschel was prejudiced in any way by the mis-description on the Complaint and on the Officer's Report. We conclude that Mr. Pieschel had adequate, fair and proper notice of our Hearing.

The 1969 Human Rights Act did not prohibit a person from addressing another as a "black bastard" or as a "blackie bastard", the two expressions which we heard in evidence. The question before our Board was whether Mr. Pieschel, in asking for the daily rent of \$20 per day was discriminating with respect to a term or condition of the tenancy because of the race or colour of the person. (It is clear that he was not denying Mr. Khan his right to occupy the premises as a tenant.) That question is not easy to decide. Mr. Pieschel did rent the tenting area to Mr. Khan. He did agree to rent his own cabin to him. The rent proposed for the trailer appears to be excessive in view of the rent charged the previous tenant by Mr. Pieschel and the rent agreed to by Mr. O'Hara. Mr. Pieschel's decision to rent the trailer only at the high daily rate may have been motivated entirely by greed. He might have made the same demand of a person who was white or Japanese instead of East Indian. The person who could have given the best evidence on this issue was Mr. Pieschel himself. He did not attend the Hearing of the Board so we do not have his direct evidence. In the material provided to us by the Director, there is information indicating that Mr. Pieschel has justified his action by stating that there was not enough room in the trailer for all seven Khans. Though the new Code provides (section 16(5)) that we are not bound by the strict rules of evidence, we prefer not to make a specific finding as to whether this was an articulated excuse or not. We did probe into the issue of the suitability of the premises at the Hearing and are satisfied that the size of the Khan family was not a real issue. Mrs. Khan indicated that it was always clear to Mr. Pieschel that only she and Mr. Khan would sleep in the trailer. It was always clear that her mother and the children would remain in the tents.

It is unfortunate that Mr. Pieschel did not attend to provide us with his evidence. We are not so sensitive as to interpret his action as contemptuous. Mr. Carsen testified that he spoke by telephone to Mr. Pieschel and that Mr. Pieschel experienced some difficulty in obtaining someone to substitute for him at work so that he could attend. Mr. Carsen did inform Mr. Pieschel that the Hearing could proceed in his absence. Regulation 11 authorizes us to proceed in the absence of any party who has been given notice of the Hearing. Mr. Pieschel did not request an adjournment of all or any part of the Hearing. We therefore considered it appropriate to proceed. Mr. Khan attended the Hearing but did not give evidence because he was not well. Mrs. Khan did give evidence. She was an excellent witness, excellent because her evidence both supported and weakened the grounds for her complaint. We concluded that she was telling the truth and accepted her evidence without qualification.

We repeat, the problem is to decide whether there has been discrimination under the old Act. There are possible explanations for the treatment other than discrimination and we have considered them. We conclude that we should draw the inference from Mr. Pieschel's language that this was a case where he discriminated against a person with respect to a term or condition of the tenancy because of the race or colour of the person. We conclude that section 14(6)(b) of the old Act entitles Mr. Khan to receive a written apology from Mr. Pieschel. We conclude from section 31(1)(c)(i) of the Interpretation Act that we have the authority to order Mr. Pieschel to apologize in writing to Mr. Khan.

We hereby order:

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