IN THE MATTER OF THE HUMAN RIGHTS ACT,
S.B.C. 1984, c.22 (as amended)

AND IN THE MATTER OF THE HEARING OF THE COMPLAINT

BETWEEN:

MATTHEW M. MYSZKOWSKI, COMPLAINANT

AND:

HER MAJESTY IN RIGHT OF THE
PROVINCE OF BRITISH COLUMBIA
AS REPRESENTED BY THE MINISTRY
OF TRANSPORTATION & HIGHWAYS,
BRIDGE ENGINEERING BRANCH,

RESPONDENT

REASONS FOR DECISION

James R. Edgett - Member Designate

Mr. R. Brail - Appearing for the Complainant

Mr. David McInnes - Appearing for the Respondent

The hearing is regularly constituted pursuant to section 14 of the Human Rights Act to hear and determine a complaint brought before it by Matthew M. Myszkowski, Complainant, against Her Majesty in Right of the Province of British Columbia as represented by the Ministry of Transportation and Highways, Bridge Engineering Branch, Respondent.

The complaint states:

> "I, Matthew M. Myszkowski, allege that B.C. Ministry of Transportation and Highways, Bridge Engineering Branch discriminated against me by refusing to continue my employment because of my place of origin (citizenship), contrary to Section 8 of the Human Rights Act of British Columbia.

At the outset of the hearing Counsel for the Complainant and the Respondent agreed that the facts of this matter were not in dispute. These facts were as follows:

1. The Complainant's place of origin is Poland from whence he immigrated to Canada in 1983.

2. He was at the time of the alleged discrimination a landed immigrant and not a Canadian citizen.

3. The Complainant was employed by the Respondent as a Technician I on January 23, 1985.

4. On January 25, 1985, the Respondent advised the Complainant that his employment was to be terminated immediately because he was not a Canadian citizen.

5. By letter dated January, 31, 1985, the Respondent advised the Complainant that, as he did not meet the citizenship requirements pursuant to section 34 of the Public Service Act, his employment could not be continued.

Section 34 of the Public Service Act R.S.B.C. 1979 c.343 reads:

> "34. The commission, in appointing a person to a position in the public service shall appoint a Canadian citizen; but, if no qualified Canadian citizen applies for a position, the commission may appoint another person as a temporary appointment."

The Public Service Act is a statute which, among other matters, governs the employment of all public service employees by the various Ministries, Branches, Divisions or Departments of the Government of the Province of British Columbia. That it applies to the Complainant and the Ministry of Transportation and Highways, Bridge Engineering Division, is not in question.

It is clear that the Human Rights Act is binding on the Government of the Province of British Columbia and prevails over any conflicting provisions of the Public Service Act. Section 22(2) of the Human Rights Act states that "where there is a conflict between a provision of this Act and a provision of another enactment, this Act prevails" and Section 14(1) of the Interpretation Act, R.S.B.C., 1979, c. 206 states that "unless it specifically provides otherwise,

an enactment is binding on her Majesty." Upon consideration of the above quoted sections and the fact that the Human Rights Act does not specifically provide otherwise, it follows that the Human Rights Act applies to the Government of the Province of British Columbia and also that it prevails over any conflicting provisions of the Public Service Act.

Section 8 of the Human Rights Act reads, in part, as follows:

> "8(1) No person or anyone acting on his behalf shall
> (a) refuse to employ or refuse to continue to employ a person, or
> (b) discriminate against a person with respect to employment or any term or condition of employment, because
> of the race, colour, ancestry, place of origin, political belief, religion, marital status, physical or mental disability, sex or age of that person..." (emphasis added).

Clearly the question which is before me is:

> "Does the term "place of origin" set forth in Section 8 of the Human Rights Act include or encompass "citizenship"?

If the answer to this question is in the affirmative then there is no doubt that the Complainant was discriminated against contrary to Section 8 of the Human Rights Act. If the answer is in the negative then it follows that citizenship is not a prohibited ground within the meaning of

the Human Rights Act and the Complainant has not been discriminated against contrary to that statute.

Counsel for the Complainant argued that the Human Rights Act must be interpreted in accordance with Section 8 of the Interpretation Act, R.S.B.C. 1979, c. 204 which states:

> "Every enactment shall be construed as being remedial, and should be given such fair, large and liberal construction and interpretation as best ensures the attainment of its objectives."

He cited several cases which dealt with the need for a broad approach in interpreting human rights legislation. This proposition is most succinctly set out by the Hon. Mr. Justice McIntyre in Ontario Human Rights Commission and Theresa O'Malley (Vincent) v. Simpson-Sears Limited (unreported) which decision was rendered by the Supreme Court of Canada on December 17, 1985. In this decision the Hon. Mr. Justice McIntyre stated in his reasons for judgement the following:

> "To begin with, we must consider the nature and purpose of human rights legislation. The preamble to the **Ontario Human Rights Code** provides the guide and it is worth quoting in full:
>
> > WHEREAS recognition of the inherent dignity and the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world and is in accord with the Universal Declaration of Human Rights as proclaimed by the United Nations;
> >
> > AND WHEREAS it is public policy in Ontario that every person is free and equal in dignity and rights without regard to race, creed, colour, sex, marital status, nationality, ancestry or place of origin.

> AND WHEREAS these principles have been confirmed in Ontario by a number of enactments of the Legislature;
>
> AND WHEREAS it is desirable to enact a measure to codify and extend such enactments and to simplify their administration.
>
> There we find enunciated the broad policy of the Code and it is this policy which should have effect. It is not, in my view, a sound approach to say that according to established rules of construction no broader meaning can be given to the Code than the narrowest interpretation of the words employed. The accepted rules of construction are flexible enough to enable the Court to recognize in the construction of a human rights code the special nature and purpose of the enactment (see Lamer J. in **Insurance Corporation of British Columbia v. Heerspink and Director, Human Rights Code**, [1982] 2 S.C.R. 145, at pp. 157-8), and give to it an interpretation which will advance its broad purposes. Legislation of this type is of a special nature, not quite constitutional but certainly more than the ordinary - and it is for the courts to seek out its purpose and give it effect.

Counsel for the Complainant, in dealing with the question which was before me, cited Barnard v. Canadian Corps of Commissionaires 6 C.H.R.R. D/2659, 1985 in which an Ontario board of inquiry found that the term "nationality" contained in the Human Rights Code of Ontario encompassed or included "citizenship". However, he conceded that he was not relying to any great extent on this case, because the term "nationality" is not contained in the British Columbia Human Rights Act.

A further decision cited by Counsel for the Complainant was an Ontario Labour Relations Board decision in Ottawa Mailers Union Local No. 60 v. the Journal Publishing Company of Ottawa (1970). In this case the Ontario Labour Act prohibited the Labour Relations Board from certifying a

union if it discriminates against a person because of his "race, creed, colour, nationality, ancestry or place of origin." The Board in refusing to certify the Union found:

> "While citizenship is not necessarily synonymous with nationality, ancestry, or place of origin, restrictions on citizenship are contrary to the purpose and intent of section 10 of the Act which specifically prohibits discrimination because of nationality, ancestry, or place of origin. If there is objection to the fact that a person is not a Canadian citizen and will not declare his intention to become one, the objection must accordingly be to his race, ancestry, or nationality or to the fact that his place of origin was elsewhere than Canada. Such a restriction is, in our view, contrary to the purpose and intent of section 10 of the Act and accordingly the Board has no jurisdiction to certify a union that makes citizenship a qualification of membership."

Counsel for the Complainant also referred to the book, "Discrimination and the Law", Richard DeBoo Limited, 1982, in which Walter S. Tarnopolsky states at p. 176:

> "...Another case, which appears clearly to have made a finding of discrimination based upon "place of origin", is the Ontario Board of Inquiry decision in Bone v. Hamilton Tiger-Cats Football Club Ltd. (1979). The complainant, who was a Canadian citizen and had been a star quarterback in the Canadian university league, alleged that he had been discriminated against by the respondent football club, because of his nationality and place of origin. At the heart of the dispute was the Canadian Football League's "designated import rule", which was alleged to act as an incentive to a club to fill quarterback positions with American candidates. Under the rules, players were designated as "imports" or "non-imports" depending upon the place of their secondary-school training, i.e. where a player was trained before age 17. Further, every club was limited as to the number of "imports" who could dress for a game. However, an "import" who was a quarterback could be dressed as a reserve for the game without counting towards

> this limit. Chairman McCamus held that this induced clubs and their coaches not to give serious consideration to Canadians as candidates for a quarterbacking position. This amounted, he held, to discrimination by intent or in effect, on the grounds of either "nationality" or "place of origin" because the distinction between "imports" and "non-imports" has, "as its true purpose and effect, the drawing of a distinction between players of American origin and those who are of Canadian origin" (p. 37). Thus, he would equate "place of origin" with either "nationality" or, it seems, with "national origins"..."

Counsel for the Complainant argued that "nationality" and "citizenship" have been found closely connected in Barnard (supra) and that the decision in Bone (supra) would extend or articulate that finding to include "place of origin" to include "nationality and by implication, given the Barnard decision, would include "citizenship". He further argued that "place of origin", "nationality" and "citizenship" became inclusive of each other.

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Counsel for the Respondent cited the decision of the Alberta Supreme Court in Dickenson v. Law Society of Alberta (1978), 5 Alta. LR (2d) 136, a case involving the application of section 39(2) of the Legal Profession Act of Alberta which restricts the enrollment of a student-at-law to a person who is a "Canadian Citizen or British subject."

Counsel pointed out that in that case the question, as stated by the Court, was "Is the restriction one which violates section 9 of the Individual's Rights Protection

Act?" Section 9 of the Alberta Individual's Rights Protection Act states:

> "9. No trade union, employers' organization or occupational association shall
> "(a) exclude any person from membership therein, or
> "(b) expel or suspend any member thereof, or
> "(c) discriminate against any person or member,
> "because of the race, religious beliefs, sex, marital status, age, ancestry or place of origin of that person or member...

Counsel for the Respondent argued that the prohibited grounds of "ancestry or place of origin" are exactly the same in both the Alberta Individual's Rights Protection Act and the British Columbia Human Rights Act and that the issue before the Alberta Supreme Court is identical in all respects to the issue before this hearing, i.e., "Does the term "place of origin" include or encompass "citizenship"? Counsel then quoted the Alberta Supreme Court's finding on this point which reads as follows:

> "The Individual's Rights Protection Act speaks of "place of origin". It may be that a discrimination expressed to be against, for example, "Australians" would be equally discriminating against "nationality", "national origin" and "place of origin". Whether all or any of those phrases would apply to the particular act of discrimination, or to the statute authorizing or requiring discrimination, would depend on the circumstances of the particular case. For purposes of the present case it is sufficient to state that discrimination against all persons who are not either Canadian citizens or British subjects is not discrimination "because of the ... place of origin" of those persons. Discrimination on the basis of "place of origin" would encompass even

> Canadian citizens and British subjects who came originally from some place other than whatever place, e.g., Alberta or Canada, might be named in hypothetical discriminatory legislation. Such is not the nature of the discrimination referred to in s. 39(2)(a) of The Legal Profession Act."

Counsel for the Respondent stated that he was satisfied the decisions in Barnard (supra) and also, Snyker v. Fort Francis-River River Board of Education (1979) and Rajput v. Watkins and Algoma University College (1976) which were referred to by Counsel for the Complainant, quite correctly decided that "nationality" means "citizenship". However, he argued that "nationality" and "citizenship" are entirely distinct from "place of origin" and that the decision in Barnard clearly accepts that "place of origin" means something different than "nationality/citizenship". In support of this argument Counsel cited from Barnard as follows:

> "Section 4(1)(b) of the 1980 Code provides that "No person shall...refuse to employ...any person...because of race, creed, colour, age, sex, marital status, nationality, ancestry or place of origin of such person." The Commission has restricted its case to discrimination on the basis of "nationality". Allegations of discrimination on the basis of "ancestry" or "place of origin" which were contained in the original complaint were abandoned at the hearing. There was not the slightest indication in the evidence that the Corps discriminates on these grounds. The Corps contains members from many different backgrounds, but who are Canadian citizens or British subjects."

Counsel for the Respondent argued that the Ontario Board of Inquiry decision in Snyker (supra) further established that

"nationality/citizenship" means something different than "place of origin" and quoted the following from that decision:

> "It was argued on behalf of the Board, first of all, that the ground of discrimination prohibited under the term "nationality" does not encompass "citizenship". The term had to be understood in the entire context of a federal state and the jurisdiction of the central government in relation to these matters. As a consequence, the word "nationality" should be limited in meaning to "national origin".
>
> However, this approach fails to take into account the specific inclusion in the Ontario Human Rights Code of "place of origin" as another head of prohibited discrimination. The constitutional issue was not pressed and, in any event, I agree with counsel for the Commission that the "pith and substance" of section 4(1)(b) of the Code is the regulation of employment in Ontario.
>
> In my view, the term "nationality" in the Ontario Human Rights Code is broad enough to prohibit discrimination on the basis of citizenship. While not in any way bound by it, I adopt the following discussion by Professor Ian Hunter as an accurate analysis of the relationship of these terms:
>
> > "the term 'citizenship' and 'nationality' refer to the status of the individual in his relationship to the state and are often used synonymously. The word 'nationality' however, has a broader meaning than the word citizenship. Likewise the terms 'citizen' and 'national' are frequently used interchangeably. But here again the latter term is broader in its scope than the former. The term 'citizen', in its general application is applicable only to a person who is endowed with the full political and civil rights in the body politic of the state. The term 'national' includes a 'citizen' and a person, who, though not a citizen, owes permanent allegiance to the state and is entitled to its protection."

> Support for this interpretation can also be found in the Decision of Professor Tarnopolsky in the Complaint of Dr. M. Akram Rajput. (dated May 12, 1976) and in the reasons of the majority of the House of Lords in London Borough of Ealing v. Race Relations Board [1972] 1 All E.R. 105.
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> No argument was advanced with respect to the meaning of the term "place of origin". On the facts of this case, it might have been argued that the factor of "residence" falls outside of "place of origin". For example, if Mr. Snyker had moved to Fort Frances and obtained citizenship, he would have met the criteria of the Board's policy even though his "place of origin" would remain unchanged. In other words, "residence" might be a permitted basis for discrimination, even though "citizenship" is not. In view of my earlier determination with respect to "nationality" and in the absence of argument from counsel, I do not propose to deal with this issue since it cannot affect the ultimate result.

After consideration of the arguments of Counsel and a careful study of all cases cited, I am satisfied that the term "place of origin" set forth in Section 8 of the Human Rights Act does not include or encompass "citizenship". I can find no case in which "place of origin" is directly equated to "citizenship". In fact the decisions tend in the opposite direction.

There is no doubt in my mind that the highest authority cited and, in fact, the only case that is directly on point, is Dickenson (supra) in which it was clearly found that "place of origin" does not encompass or equate to "citizenship". I have been provided with no authorities, nor have I heard any argument, which would persuade me to disagree with that finding.

Counsel for the Complainant made a further argument that the term "ancestry" encompasses "citizenship". He cited Section 3(1)(b) of the Canadian Citizenship Act which states:

> "3(1) Subject to this Act, a person is a citizen if ...
>
> (a) he was born in Canada after the coming into force of this Act
>
> (b) he was born outside Canada after the coming into force of this Act and at the time of his birth one of his parents ... was a citizen."

He argued that the above quoted section of the Citizenship Act shows that a person can rely upon his ancestry in order to obtain citizenship and that "ancestry" therefore encompasses "citizenship".

With all respect, I cannot agree with this proposition. If, for example, a person's parents have obtained Canadian citizenship after coming from Norway, their ancestry remains Norwegian and the ancestry of their children, who are Canadian citizens by virtue of section 3(1) of the Citizenship Act, also is Norwegian. I am satisfied that "ancestry" and "citizenship" do not have synonymity nor does "ancestry" include or encompass "citizenship".

In coming to the conclusion that neither "ancestry" nor "place of origin" are equated with "citizenship", I have taken into account section 8 of the Interpretation Act and the necessity to give human rights legislation the broad interpretive approach enunciated by the Hon. Mr. Justice McIntyre in O'Malley (supra), an approach with which I am in

full agreement. However, though I am convinced that words used in human rights legislation must not be given their narrowest interpretation, I am equally convinced that the interpretation of those words must not be so broad as to extend to them meanings which are untenable or not inherent in them. The words must maintain their integrity and be considered in the context for which they were intended.

In this regard it is interesting to note that the Ontario Human Rights Act (1980) under which the Barnard case was decided contained the prohibited grounds of "nationality, ancestry or place of origin". This act was amended in 1982 and the prohibited grounds were changed to "ancestry, place of origin, ethnic origin or citizenship". Clearly the Ontario legislators continued to distinguish "citizenship" from both "ancestry" and "place of origin".

In assessing the matter before me I am mindful of the warning set out by the Board of Inquiry in Jefferson v. George Baldwin and British Columbia Ferries Service, 1976 (unreported) wherein it states that in assessing managerial decisions "one must be certain that it is not used as a cloak for the discrimination which the Human Rights Code is designed to prevent".

Here I wish to emphasize that there was no evidence presented to me to suggest, or from which an inference could be taken, that the decision of the Respondent to terminate the Complainant because he was not a Canadian citizen was a

"cloak" for discrimination on any other grounds prohibited by the Human Rights Act.

Having come to the conclusion that neither "ancestry" nor "place of origin" include or encompass "citizenship", it follows that "citizenship" is not a ground prohibited by section 8 of the Human Rights Act and, therefore I find this complaint is not justified and, pursuant to section 14(1)(d)(i) of the Human Rights Act, I hereby dismiss the complaint.

Dated in Victoria, British Columbia, this 21st day of February, 1986.

James R. Edgett, Member Designate