the fact that she was a women. For these reasons, I would have allowed the complaint made by Billie Linton.

The board also confirmed that complainants have the right to choose whether to make a complaint under the Human Rights Code or under procedures provided in a collective agreement, where they are covered by such an

## agreement.

Finally, counsel for the respondent asserted a claim for costs against the Human Rights Branch. The board determined that the claim was without merit and stated that the decision to dismiss the complaint was one which occasioned a great deal of difficulty for the board.

OCT. 1972

## HUMAN RIGHTS CODE: BOARD OF INQUIRY DECISION

Alex and Nella Nelson (Complainants)

v. Mr. and Mrs. Gubbins and Byron Price Associates Ltd.

(Respondents)
Leon Getz
S. Gudmundseth
R.A. Price

A board of inquiry upheld a complaint by Alex Nelson and Nella Nelson alleging that they were denied tenancy, contrary to section 5 of the Human Rights Code, because they are native Indians.

Mr. and Mrs. Nelson had inquired about an advertised vacancy in a townhouse complex owned by Belvedere Estates Ltd. Byron Price and Associates Ltd., acting as rental agent, provided instructions to the resident managers.

On two separate occasions, Mr. and Mrs. Nelson were told in person by Mrs. Gubbins, the wife of the resident manager, that there was no vacancy in the complex, although on the day of the first inquiry an advertisement of vacancies had appeared in the Victoria Colonist. On each occasion there had been a "vacancy" sign on the lawn of the complex, in front of the Manager's apartment. Moreover, Mr. Stern, a relative of the complainants and an RCMP officer, had been advised, when he telephoned after each of the Nelson's unsuccessful inquiries of Mrs. Gubbins, that vacancies existed. In addition to this, after making a further inquiry by telephone, subsequent to the first failed attempt to rent the townhouse, Mrs. Nelson had been told by an employee of Byron Price and Associates Ltd. that there was in fact a vacancy, and she had been referred to the resident manager of the complex.

testimony at the board of inquiry that there were tenants of a variety of racial origins in the complex, counsel for the respondent sought dismissal of the complaint.

In his decision upholding the complaint, the chairman of the board of inquiry confirmed that the Human Rights Code does not require that there be space available for occupancy by a tenant, but simply that it be advertised or represented as available, for a complaint of discriminatory treatment to be successful. The newspaper advertisements, telephone information provided to Mr. Stern, and the "vacancy" sign outside the complex were found to be sufficient to meet this requirement. Mrs. Gubbins' position, that there was no vacancy since another application was pending, was considered to be insufficient, given the wording of the Code, to dismiss the complaint. In addition, Mrs. Gubbins had testified that there was a fairly high rate of rejection of applications The board of inquiry found that Mrs. Gubbin: had in fact denied the Nelsons the right to occupy space represented as being available for occupancy, because of their race. This decision was not modified in testimony that other tenant in the complex were of a variety of racial origin: Professor Getz stated: "It cannot, in my opinion be deduced from the fact that one is tolerant of. and not disposed to discriminate against some racial groups, that one is similarly disposed in respect of all racial groups."

On the occasion of the second personal inquiry by the Nelsons, Mrs. Gubbins had stated that there already was an application pending on the



wages to Mrs. Gubbins, was vicariously responsible for the contravention of the Code resulting from her actions in the course and scope of her employment. This was determined because she sought instructions from its officers, was given advice, and acted upon those instructions.

The board also held that Mr. Byron Price and Mr. Gubbins had been incorrectly named as respondents and awarded them each costs.

In making an award of one hundred fifty dollars, Professor Getz found that the Nelsons were entitled to compensation for the injury to their feelings and self-respect. Mr. Getz stated:

In my opinion, it is not a necessary condition of liability for aggravated damages under the Code that the complainant should have been publicly humiliated or degraded. It is perfectly compatible with the object and the language of the Code, to hold, as I do, that even if a contravention takes place without any attendant publicity, an award in respect of aggravated damages may be made. In my opinion, it cannot but be humiliating and damaging to one's self-respect to be denied the right to occupy space represented as being available simply because of one's racial origin.

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