

society without fear of persecution or discrimination.

By refusing to publish the advertisement in question, by denying homosexuals the right to avail themselves of advertising which would assist in the circulation of their newspaper--a newspaper which is devoted purely to a legitimate and informative discussion of homosexuality--the respondent is in fact restricting the right of homosexuals to their enjoyment of freedom of the press.

In the wide field of legislative authority that the provinces do have over newspapers is included the authority to require newspapers within the Province of British Columbia to adopt advertising policies that are not in violation of the principles set out in the Human Rights Code.

After considering all the evidence offered at the Hearing, and the various arguments put forward by the parties to this complaint, this Board is of the opinion that no reasonable cause existed for the refusal of the respondent to publish the advertisement submitted by the complainant. The allegation of the complainant is therefore justified; and, accordingly, pursuant to the powers vested in it by Section 17 (2) of the Human Rights Code, this Board orders the respondent to cease contravening Section 3 (1) of the Human Rights Code. Specifically the Board orders the respondent to make the facilities of its classified advertising section available to the complainant. It goes without saying that any advertisement submitted by the complainant to the respondent for publication must, of necessity, meet those proper standards of decency and legality, insofar as its form and substance are concerned.

The Board further orders the respondent to refrain from committing the same or similar contravention of Section 3 (1) of the Code in the future.

Section 17 (2) (c) of the Code provides for an order of compensation, not exceeding \$5,000, in such cases where the Board is of the opinion that the person who contravened the Act did so knowingly or with wanton disregard where the person discriminated against suffered aggravated damages in respect of his feelings or self-respect.

This Board has previously ruled that the punitive results of applying this section of the Code should be reserved for those extreme or aggravated cases where the full meaning of the terms "wanton disregard" and "aggravated damages" can be given effect to. In this case the evidence clearly established that the complainant sought an opportunity to test

the effectiveness of the Human Rights legislation, and, accordingly, it would be difficult to find that the complainant had suffered aggravated damages in respect of its feelings or self-respect. Accordingly, the Board makes no order under this subsection of Section 17.

Section 17 (3) of the Code entitles the Board to make such orders as to costs as it considers appropriate. Attempts were made, firstly by the complainant itself and secondly by the Human Rights Branch, to negotiate a settlement of this complaint. Had these attempts been successful, the necessity of a Board of Inquiry hearing would have been obviated. Under these circumstances, there would appear to be no reason why the Board should not order costs against the respondent. The Board assesses costs in the amount of \$500, and orders that the respondent pay that sum forthwith to the complainant.

MARCH 1976

DISCRIMINATION IN ACCOMMODATION

A complaint by Ms. Jean Sam against Paul Tymchischin and the Tweedsmuir Hotel Company Ltd.

This Board of Inquiry was convened, on January 8th, 1976, in the Village Council Chambers in Burns Lake, British Columbia. The complainant was present and represented by R.J. Jephson. Ms. Kathleen Ruff appeared on behalf of the Human Rights Branch. Neither of the respondents appeared before the Board of Inquiry, nor did anyone appear on their behalf.

The Board of Inquiry hearing dealt with a complaint dated June 5, 1975, signed by Jean Sam, alleging a violation of Section 3 (1) of the Code. The complaint alleges discrimination against her by the respondents Paul Tymchischin and the Tweedsmuir Hotel on the basis of race and colour.

When the Board convened, it became apparent that the respondents were not in attendance and that nobody appeared before the Board on their behalf. There was, however, a letter on the stationery of the Tweedsmuir Hotel, awaiting the Board on its arrival in Burns Lake. The letter was dated January 5th, 1976, and stated as follows:

"This is to inform you that I cannot attend your hearing scheduled for January 8th, 1976, pertaining to your Human Rights Issue, reason being - this day is set aside for my Ukrainian Christmas."

There is no question that the Board is entitled to proceed in the absence of a party to a complaint, for Regulation 11 of the Regulations contained in Order-in-Council No. 593, dated February 18th, 1975, and enacted pursuant to Section 16(6) of the Code, states:

"Where a party who has been given notice of hearing fails to attend before the Board in accordance with the notice the Board may proceed with the hearing and dispose of the matter in the absence of that party."

In order to proceed in the absence of a party pursuant to Regulation No. 11, the Board must be satisfied that the party in question has been given notice of the hearing. Quite clearly, from the letter filed as Exhibit 1, Mr. Tymchischin and the Tweedsmuir Hotel Company Ltd. were aware of the scheduled hearing.

The Board adjourned briefly to consider whether or not, under the authority of Regulation No. 11, it ought to proceed in the absence of the respondents. This adjournment lasted some one half hour, following which, when the Board reconvened, counsel for the complainant sought leave to call some evidence relating solely to the issue of whether or not the inquiry should proceed.

The Board heard sworn testimony from Mr. Bill Parkinson, a Human Rights Officer stationed in Terrace, B.C., to the effect that during the immediately preceding adjournment, he had been at the Tweedsmuir Hotel and spoken to a man whom he believed to be the respondent, Mr. Tymchischin. He further testified that he spoke to a woman whom he knew to be the respondent's wife, Mary Tymchischin.

The Board additionally heard sworn testimony from Mr. Larry Davies, who indicated that, during the same period of time (that is some time between 11:30 and 12:00 a.m. on January 8th, 1976), he went to the Tweedsmuir Hotel, and there saw a man whom he knew was Paul Tymchischin.

The Board was further advised at this time that Ukrainian Christmas in fact falls on January 6th, and Ukrainian New Year's on the 12th of January.

From all of these facts the Board concluded that the respondent was properly served with the notice of hearing and was deliberately avoiding attendance at the hearing for no good reason. The Board would be loath to impose upon any person's observance of a religious holiday; however, it was first of all quite clear that January 8th, 1976, was not Ukrainian Christmas Day, and secondly

it was quite clear from the evidence of both Mr. Parkinson and Mr. Davies that, whatever Mr. Tymchischin's religious beliefs, he was apparently engaged in his business and not engaged in observing any religious holiday at the very time that the hearing was scheduled to proceed.

Accordingly, the Board decided to proceed in the absence of the respondents, pursuant to its jurisdiction to do so.

The Board heard sworn testimony from the complainant, Ms. Jean Sam. Ms. Sam, who is a native Indian, testified that in May of 1975 she was residing in Houston, British Columbia, and taking a course through the auspices of the Regional College in Burns Lake, British Columbia. She spoke to Ms. Theresa Gerow, an Education Counsellor at the Burns Lake Community Development Association who, on her behalf, phoned the Tweedsmuir Hotel to inquire about a room. Accordingly, Ms. Sam went to the Tweedsmuir Hotel with a friend, one Durban Skim.

On arriving at the hotel, she asked the desk clerk for a room for herself for the ensuing three weeks, which was the length of time that the course she was taking was to continue. The desk clerk advised her to see the manager first.

Ms. Sam asked the respondent, Mr. Tymchischin, if it was possible for her to get a room for three weeks. He replied in the negative. He went on to say that, on previous occasions, Indians had rented rooms in his hotel, and they had damaged things in the rooms and had brought other people in to stay who were not paying rent. He further stated that Indians partied too much, and that Indians never had any money to pay for damages. At no time did the respondent indicate that the complainant personally had been involved in any of these previous activities, nor indeed could he have, since Ms. Sam's evidence clearly was that she had only stayed at the hotel on one occasion four years previously when the management of the hotel was different. Although she had, from time to time, been in the beer parlour of the Tweedsmuir Hotel, on no occasion had her conduct been improper, nor had she on any occasion drawn herself to the attention of the management of the hotel in any way.

The respondent indicated to Ms. Sam that he didn't want any Indians staying in his hotel any more, and the complainant thereupon asked him, "So you won't rent a room to an Indian?" The respondent's reply was "No", whereupon Ms. Sam and Mr. Skim left the hotel.

All of this conversation occurred in the lobby of the Tweedsmuir Hotel, a short distance from the desk. The complainant remembered at least one other person, Peter John, being present in the lobby at that time. The lobby of the hotel, of course, is a place to which the public has access. This conversation and the refusal of service on the part of the respondent therefore occurred in what was, to all intents and purposes, a public place.

The next witness called on behalf of the complainant was Ms. Elayne van Snellenberg. She is an employee of the Department of Indian Affairs, a Director of Federal Programming and liaison officer working out of the offices of the Burns Lake Community Development Association. She was in the offices of that Association on May 30th when Ms. Sam returned to the office from the Tweedsmuir Hotel.

After discussing Ms. Sam's experience with one Mike McKinley and other persons in the office, including one Carly Puls, Ms. van Snellenberg decided to go to the Tweedsmuir Hotel, with a view to obtaining a room on a weekly or monthly basis. She went to the desk with Carly Puls and spoke to the same desk clerk that Ms. Sam had previously spoken to. Again she was referred to the manager who was in the office. He advised her that rooms were available on a weekly or monthly basis, and, in fact, showed her a room which was then available.

During the course of showing her around he indicated that the rules of the hotel were such that persons who were not registered as guests could not attend in the rooms of the hotel after midnight. Facetiously Ms. van Snellenberg asked, "You mean I cannot have any wild parties?". To which Mr. Tymchischin replied that he had many unfortunate experiences, particularly with Indians. He then went on to relate a number of experiences that he alleged he had with Indian tenants.

Mr. Puls was then sworn as a witness, and his subsequent testimony substantiated the evidence of Ms. van Snellenberg with respect to her attendance at the Tweedsmuir Hotel on May 30th, 1975. He specifically recalled that during the course of the somewhat heated discussion on that day, Mr. Tymchischin had said that there were two reasons why "Indians were different". The first of these was that Indians were not actionable, and had nothing to give as compensation even if they were. The second was that Indians do not live like white people, and that 95 percent of them were no good. Mr. Puls's notes, written on June 4th, 1975, and signed by him, giving a complete description of

the visit to the Tweedsmuir Hotel, were marked as Exhibit 6 in the proceedings after being identified by him.

The Board then accepted into evidence two statutory declarations from Maurice Guilbault, a Human Rights Officer who was not available to give evidence before the Board, owing to his absence from the country. These statutory declarations were filed as Exhibits 7 and 8.

Exhibit 7 stated that Mr. Guilbault went to Burns Lake on June 4th, 1975 to investigate the complaint of Jean Sam. He spoke there with Theresa Gerow, the complainant, Durban Skim, Elayne van Snellenberg and Carly Puls. He subsequently spoke to Mr. Tymchischin and his wife Mary Tymchischin. He also spoke on June 5th, 1975, with Gail Thompson, who was the desk clerk on duty at the time of the incident. Ms. Thompson affirmed that there were two different policies for renting rooms to Indians and to Caucasians. She further admitted that there was a notice posted behind the counter, invisible to patrons of the hotel, but clearly visible to those who were on duty behind the desk. That notice read as follows:

"Notice to all desk clerks. Do not rent any rooms to any Indians, no matter who, unless checked out first with Paul. Also, do not rent to anyone that is intoxicated in any way or is abusive in any way. Excuse: We are all full up, sorry, etc., etc. This applies all the time. We are trying to run a decent place so that tourists are not afraid to walk into the lobby. Please see that all desk clerks adhere to this rule. Thank you. Manager."

Exhibit 7 further states that on June 5th, 1975, Mr. Guilbault met the respondent, Paul Tymchischin, in an effort to mediate the situation, but was unable to achieve any success in that regard. The statutory declaration further stated that on June 30th, 1975, Mr. Guilbault wrote a letter to the respondent, Paul Tymchischin, in another effort to meet and settle the complaint. No reply to that letter was ever received.

Exhibit 8 elaborates on the meetings between Mr. Guilbault and the respondent, Paul Tymchischin, and his wife on June 4th, 1975. Mr. Guilbault relates that in his conversations with the respondent, Paul Tymchischin, the latter said he did not discriminate but that Indians must have responsibilities. The respondent further stated that "Indians treat you like animals". He stated that Indians did not look respectable, and that if you put one rotten apple in the

Mr. Tymchischin was advised by Mr. Guilbault that to refuse a room to someone because of his race and colour was contrary to the Human Rights Code of British Columbia. Mr. Tymchischin's reply was that he "didn't give a damn what the regulations said". He refused to provide the hotel records to Mr. Guilbault, and went on to state that Indians did not pay taxes, most of them were on welfare, and that this was his reason for refusing to rent rooms to Indians.

The Board then heard sworn testimony from Mr. Bill Parkinson, a Human Rights Officer in Terrace, B.C. Mr. Parkinson assumed his duties under the Code some time in August of 1975. Investigating another complaint, he visited the Tweedsmuir Hotel on November 19th, 1975, and there spoke with the desk clerk. The desk clerk, whom he identified as Gail Thompson, admitted to him that behind the desk were two notices, visible to those employed by the hotel, but invisible to patrons. She agreed, on being shown Mr. Parkinson's identification, to let him have these notices for the purposes of photocopying.

Mr. Parkinson left the hotel to photocopy the notices, and advised Ms. Thompson to get in touch with the management, because he wished to speak to them on his return. Returning to the hotel a few moments later, he was directed to the office and spoke to Mary Tymchischin, wife of the respondent. He offered the notices back to Mrs. Tymchischin, but she made no effort to retrieve them, and for that reason he still had them in his possession on January 8th when he gave his testimony. They were marked as Exhibits 9 and 10. Exhibit 9 appeared on a small piece of green paper, approximately 4 inches square, and read as follows:

"Don't rent to any Indians or drunk whites unless checked with Paul first. Mgr."

The second notice appeared on a small piece of white paper approximately 4 inches long and 2 inches wide and simply stated, "Don't rent to any Indians". The words "any" and "Indians" are underlined for emphasis. The latter notice, which was filed as Exhibit 10, was apparently affixed to the cash register, whereas the former was apparently pasted on a small opaque window screening the patrons of the hotel from employees working behind the desk.

The following afternoon Mr. Parkinson telephoned the hotel and asked for the manager. After a few moments a man answered the telephone, at which point

at the hotel the male person on the other end of the line retorted: "You know what--you go to hell", and then hung up.

Counsel for the complainant described what occurred on May 30th, 1975, as a flagrantly discriminatory act. The Board concurred, and added that it would be difficult to conceive of a more flagrant discriminatory act. It was unquestionably a refusal and a denial of service under Section 3 of the Code, and the sole reason for that denial and refusal was unquestionably the racial prejudices of the respondent, Paul Tymchischin, as directed toward native Indians. The Board unhesitatingly accepted the evidence of the witnesses who were called, and looked upon the refusal of the respondent to attend at the hearing as a further indication of his complete contempt, not only for the letter, but also for the spirit of the Human Rights Code.

The Board conceded that any hotel manager must of necessity be concerned about establishing and maintaining proper conduct on the part of those persons who avail themselves of the hotel premises. His responsibilities and rights, both under the Innkeepers Act and the Human Rights Code, must not conflict. If any person conducts himself in such a fashion as to endanger or damage the premises, or otherwise commit a breach of the Queen's Peace, or interfere with the right of the manager and his patrons to the quiet enjoyment of the hotel facilities, that person surrenders the right to enjoy the hotel's privileges, and the manager has every right to remove him and to refuse to serve him in the future. Such a rule applies equally to all persons, irrespective of their racial origin or colour.

Nothing could be said on behalf of the respondent to justify or excuse his conduct on May 30th, 1975, or subsequent to that date. His actions exemplified the kind of conduct the Code was enacted to eliminate. For people like Jean Sam, for whom discrimination such as this has become a way of life, the Code is a declaration that society will no longer permit an individual's dignity to be insulted by ignorance or bias.

Pursuant to Section 17 of the Code, an order was issued to Mr. Tymchischin and to Tweedsmuir Hotel Company Ltd. requiring that they cease contravening Section 3 of the Code. Specifically, the Board ordered that the facilities of the hotel be made equally available to native Indians and to Caucasians. The Board further ordered that the respond-

ents refrain from committing the same or any similar contravention in future.

Section 17 (2) (c) provides that the Board may order compensation in those cases in which the person who contravenes the Code did so knowingly, or with a wanton disregard, and when the person discriminated against has suffered aggravated damages in respect of his feelings or self-respect. The Board had previously ruled that the penal provisions of this subsection be reserved for the more aggravated cases. It had no hesitation in ruling that this case was of the type envisioned by the Legislature of the Province as appropriate for application of the subsection. The Board therefore ordered that the respondents pay to the complainant, Jean Sam, the sum of \$500 as compensation pursuant to Section 17 (2) (c).

The Board emphasized that, insofar as the conduct of the respondent toward the complainant was concerned, the sum of \$500 was not to be taken as a true measure of the damages suffered by the complainant in respect of her feelings or self-respect. The Board could have awarded the statutory limit of its jurisdiction under Section 17 (2) (c) which is \$5,000. The Board judged, however, that the award of \$500 would serve to impress upon the mind of the respondent, Tymchischin, that it regarded his conduct toward the complainant, and toward native Indian people generally, as of the most reprehensible kind.

The Board also awarded costs of \$750 to the complainant to cover the expenses incurred by having to be represented by legal counsel.

Several consequences of the action

If Mr. Nelson had had the chance to explain to Mrs. Sam, either at the hearing or at the hearing of her trial in April 1975, that he was an experienced driver, she would have been in the position of understanding that experienced. His failure to do so gave rise to the wrong feeling to the hearing and to the hearing itself.

We believe that in November 1974, Nelson was prejudiced against the idea of having women forklift drivers. We believe that this prejudice remained in February 1975. Our hearing was held in November 1975 and January 1976. This may be a naive conclusion, but we are of the view that, by the end of the hearing in that case, Mr. Nelson had come around to the position that a woman can handle the forklift job. The complainant should be entitled to lost wages, if any, which she has lost through protesting the complaint through the grievance procedure in the plant and through attending the hearing in Nelson and her reasonable costs, if any, actually incurred in attending that hearing.

EMPLOYMENT HISTORY WITHOUT CASE

The three complainants, Filomena Lopezcano, Gertrude Kato Wilson and Marie Guzman are former employees of Sheraton Private Hospital Ltd. The company operated a private hospital at 1430 Hillside Avenue in Victoria until June 3, 1971. On that date, the hospital was purchased by the Provincial Government, and at the direction of the Government, the responsibility for the administration of the hospital was accepted by the Queen's Park Hospital Society.

Prior to the takeover and in preparation of the sale, the entire staff of the hospital received formal notice of termination from the former owner. All the employees were invited to submit applications for employment to the Society by George Harrison, the new administrator, and he advised them that their applications would be given full consideration. Most of the former Sheraton employees who submitted applications were hired by the new administration. The three complainants were among those who were not.

In particular, the contravention alleged is discrimination on the basis of race or place of origin, and/or removal of