

MAY 197

# HUMAN RIGHTS BOARDS OF INQUIRY

## SUPREME COURT OF BRITISH COLUMBIA

**Petitioner:** Forest Industries Flying Tankers Ltd. and W.F. Waddington

**Respondents:** Thomas Kellough, Board of Inquiry appointed pursuant to the Human Rights Code of BC, and Director, Human Rights Code

**Decision Dated:** January 3, 1979

The employer applied to the Supreme Court of BC for an order prohibiting a Board of Inquiry from hearing the complaint made by Thomas Kellough that he was discriminated against contrary to Section 8 of the Human Rights Code of BC when he was forced to retire from his job as a pilot at age 60.

The company argued that it is wholly regulated by federal jurisdiction under the Aeronautics Act and that the provincial Human Rights Code therefore has no application to its operation.

The company operates water bomber airplanes and other aircraft used for fire environmental evaluation, ambulance service, and senior executive inspections. The shareholders of Forest Industries Flying Tankers Ltd., include MacMillan Bloedel Limited, Pacific Logging Co. Ltd., Tahsis Company Ltd., BC Forest Products Ltd. and Western Forest Products Ltd.

Mr. Kellough commenced employment as a pilot with Flying Tankers in May 1964. He was one of six pilots of a total staff of 23.

Counsel for Mr. Kellough and the Human Rights Branch argued that the employer's business is part of the forestry industry within this province and that the Human Rights Code of BC is therefore applicable to its operations.

In his decision rejecting the application for a writ of prohibition, Mr. Justice Andrews held that *Culley vs. CP Air* (which held that the Human Rights Code of BC does not apply to CP Air) is distinguishable from this complaint in that CP Air is clearly engaged in aeronautics and has no attachment to any provincial undertaking, while Forest Industries Flying Tankers Ltd. is controlled and operated by five provincial forest companies for the purpose of working in one area of the forest industry, and therefore comes under the jurisdiction of the provincial Human Rights Code.

There was an oral hearing on November 20, 1978 when the writ was argued. However, the decision of the Board stands that Mr. Chapman made no attempt to reveal the names of Canada Managers showing a pattern for a discrimination, after learning of it on November 20, and that the writ was not an appropriate remedy for Mr. and Mrs. Kellough.

Mr. Justice Andrews held that the Respondents discriminated against Mr. Kellough in respect of employment, contrary to Section 8(1) of the Code. The Board also determined that "the evidence established no basis for a finding of reasonable cause in this case."

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The Board said that "throughout the proceedings Mr. Chapman maintained that he acted with the best of general intentions and as a fair-minded person. The Board does not provide a defence." In support of this, the Board quoted *Brown v. Board of School Trustees, School District 402 (Central BC Human Rights Board of Inquiry, June 10, 1977) p. 12*, a "person may have the best of general intentions and nevertheless contravene the Code."

The Board ordered the Respondent to cease such contraventions and to refrain from committing further contraventions.